FAMILY REUNIFICATION FOR REFUGEES AND OTHER BENEFICIARIES OF INTERNATIONAL PROTECTION

UNHCR Guidelines on international legal standards relating to family reunification for refugees and other beneficiaries of international protection

UNHCR issues these Guidelines pursuant to its mandate as contained in, inter alia, the *Statute of the Office of the United Nations High Commissioner for Refugees*, particularly its competence to supervise the application of international conventions for the protection of refugees in accordance with paragraph 8(a), in conjunction with Article 35 of the *1951 Convention relating to the Status of Refugees* and Article II of its *1967 Protocol*.

These Guidelines have benefited from comprehensive research and broad consultations. These Guidelines set out international legal standards concerning family reunification and relevant procedures for refugees and other beneficiaries of international protection.

These Guidelines are intended to provide guidance to governments in developing and implementing legislation, policies and programmes regarding family reunification of refugees and beneficiaries of complementary forms of international protection and temporary protection or stay arrangements. They are also intended to assist decision-makers, including administrative and judicial bodies, in making decisions regarding access to family reunification for the aforementioned persons. These Guidelines also aim to assist other international and national entities and actors including civil society; lawyers; private sector organizations and enterprises; national human rights institutions; as well as UNHCR and other UN agencies, funds and programmes dealing with family reunification for refugees and other beneficiaries of international protection.

The Guidelines are available online at:
www.refworld.org/policy/legalguidance/unhcr/2024/en/149243.

These Guidelines complement UNHCR's *Operational Guidelines on Facilitating Family Reunification for Persons in Need of International Protection* available online at: www.refworld.org/policy/opguidance/unhcr/2024/en/148271.

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I. Introduction

1. The right to family life and the principle of family unity are of particular importance in the context of international protection and apply irrespective of whether or not a country is a Contracting State of the 1951 Convention relating to the Status of Refugees (1951 Convention) and/or its 1967 Protocol.[1] When people flee persecution and other serious harm, they are often separated from their family members. Maintaining and facilitating family unity helps to ensure their protection, physical care, emotional well-being and can equip them more effectively to pursue durable solutions.

2. A prolonged separation can have devastating consequences on the mental health and physical well-being of all family members in countries of asylum, countries of origin and other countries.[2] Being reunited with family members who remained behind is one of the most pressing concerns of refugees and other persons in need of international protection who are beneficiaries of complementary forms of international protection and temporary protection and stay arrangements (hereafter referred to as "refugees and other beneficiaries of international protection").[3] Worry about family members and feelings of guilt impact their psychological well-being.[4] This has an adverse effect on the ability to integrate in the country of asylum, become active members of the community, contribute to the economic development and rebuild their lives.[5]

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[1] *Convention relating to the Status of Refugees* (28 July 1951) 189 UNTS 137 (1951 Convention), www.refworld.org/legal/agreements/unga/1951/en/39821. *Protocol relating to the Status of Refugees* (31 January 1967) 606 UNTS 267 (1967 Protocol), www.refworld.org/legal/agreements/unga/1967/en/41400. Expert Roundtable organized by UNHCR and the Graduate Institute of International Studies in Geneva, Switzerland, 8–9 November 2001, 'Summary Conclusions: Family Unity', in E. Feller, V. Türk, and F. Nicholson (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003), pp. 604–608, para. 4, www.refworld.org/policy/legalguidance/cup/2003/en/46709.

[2] British Red Cross, International Committee of the Red Cross (ICRC), Red Cross EU Office, Swedish Red Cross, Swiss Red Cross, *Humanitarian consequences of family separation and people going missing*, June 2019, https://redcross.eu/positions-publications/reuniting-families-across-borders.

[3] A. Miller et al., 'Understanding the mental health consequences of family separation for refugees: Implications for policy and practice', *American Journal of Orthopsychiatry* (2018) Vol.88 (1), pp. 26–37. H. Hungerbühler, 'Family reunification: an important aspect for health and integration', Swiss Red Cross, 2023, Section 4.2.3, www.migesplus.ch/publikationen/familiennachzug-ein-wichtiger-faktor-fuer-gesundheit-und-integration [in German].

[4] B.J. Liddell et al., 'Understanding the effects of being separated from family on refugees in Australia: a qualitative study', *Australian and New Zealand Journal of Public Health* (2022) Vol.46 (5), pp. 647–653. G. Fogden, D. Berle and Z. Steel, 'The Impact of Family Separation and Worry About Family on Psychological Adjustment in Refugees Resettled in Australia', *Journal of Traumatic Stress* (2020) Vol.33, pp. 894–907. A. Nickerson et al., 'The impact of fear for family on mental health in resettled Iraqi refugee community', *Journal of Psychiatric Research* (2010) Vol.44, pp. 229–235. C. Rousseau, A. Mekki-Berrada and S. Moreau, 'Trauma and extended separation from family among Latin American and African refugees in Montreal', *Psychiatry* (2001) Vol.64 (1), pp. 40–59.

[5] E. Beaton, A. Musgrave and J. Liebl, *Safe but not settled: The impact of family separation on refugees in the UK*, Refugee Council and Oxfam, 21 January 2018, https://policy-practice.oxfam.org/resources/safe-but-not-settled-the-impact-of-family-separation-on-refugees-in-the-uk-620409/. L. Walther et al., *Living conditions and the mental health and well-being of refugees: Evidence from a large-scale German panel study*, Deutsches Institut für Wirtschaftsforschung (DIW), 2019, www.econstor.eu/handle/10419/195293. Organisation for Economic Co-operation and Development (OECD), 'Chapter 4: Family ties: How family reunification can impact migrant integration', in *International Migration Outlook*, 15 October 2019, https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/10/international-migration-outlook-2019_db218c95/c3e35eec-en.pdf. Liddell et al., note 4 above. Hungerbühler, note 3 above, Section 4.3.

Children, in particular if unaccompanied or separated,[6] suffer from heightened psychological distress caused by an accumulation of traumatic experiences, loss, separation and uncertainty.[7] People who remain in the country of origin are likely in many cases to be subject to the same persecution or serious harm for which their family members were granted international protection, or possibly face reprisals for their flight. People who flee to another country or move there while seeking family reunification or for other reasons are often exposed to unsafe conditions affecting their psychological well-being, health and physical safety, as well as the education and development of children.[8] Long delays and accumulating costs for submitting and substantiating applications for family reunification may exacerbate insecurity and the risk of falling prey to smuggling and trafficking.[9] Processing applications for family reunification in a "positive, humane and expeditious manner"[10] may be the only

[6] "Unaccompanied children" are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Note that some States still refer to these children as "unaccompanied minors" in their legislation and policies; UNHCR uses the term "unaccompanied children". "Separated children" are those separated from both parents or from their previous legal or customary primary caregiver but not necessarily from other relatives. They may therefore include children accompanied by other adult family members. UNHCR, *2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child*, May 2021, p. 12, www.refworld.org/policy/opguidance/unhcr/2021/en/122648.

[7] Amnesty International, The Refugee Council and Save the Children, *Without My Family: The impact of family separation on child refugees in the UK*, 2019, pp. 15–18, www.amnesty.org.uk/files/2020-02/Without_my_family_report.pdf?VersionId=bmYG2.9kNYxBEpy2gPZ.VJTU4pWZT7Ay. I. Bronstein and P. Montgomery, 'Psychological Distress in Refugee Children: A Systematic Review', *Clinical Child and Family Psychology Review* (2011) Vol.14 (1), pp. 44–56. M. Hodes et al., 'Risk and resilience for psychological distress amongst unaccompanied asylum seeking adolescents', *Journal of Child Psychology and Psychiatry* (2008) Vol.49 (7), pp. 723–732. T. Bean et al., 'Comparing Psychological Distress, Traumatic Stress Reactions, and Experiences of Unaccompanied Refugee Minors With Experiences of Adolescents Accompanied by Parents', *Journal of Nervous and Mental Disease* (2007) Vol.195, pp. 288–297. T. Bean, E. Eurelings-Bontekoe and P. Spinhoven, 'Course and predictors of mental health of unaccompanied refugee minors in the Netherlands: One year follow-up', *Social Science & Medicine* (2007) Vol.64 (6), pp. 1204–1215. These studies show that psychological distress is significantly higher among unaccompanied and separated children than children living with their parent or primary caregiver. The studies also find that psychological distress increases with age among unaccompanied and separated children and is slightly higher among girls. Unaccompanied and separated children living in high-support care arrangements such as foster families seem to cope better with trauma. See also UNHCR, *"A Refugee and then…" Participatory Assessment of the Reception and Early Integration of Unaccompanied Refugee Children in the UK*, June 2019, pp. 75–77, www.unhcr.org/uk/media/refugee-and-then.

[8] F. Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, January 2018, 2nd edition, pp. 124–126, www.refworld.org/reference/research/unhcr/2018/en/122578. European Council on Refugees and Exiles (ECRE) and Red Cross EU Office, *Disrupted Flight: The Realities of Separated Refugee Families in the EU*, November 2014, pp. 18–22, www.refworld.org/reference/themreport/ecre/2014/en/114219. Beaton, Musgrave and Liebl, note 5 above.

[9] A study by the British Red Cross found that 47 per cent of the 91 cases investigated involved security concerns including abduction, arrest or imprisonment, domestic violence, forced recruitment and other violence such as experienced in armed conflict environments. Jacob Beswick, British Red Cross, *Not so straightforward: the need for qualified legal support in refugee family reunion*, National Red Cross/Red Crescent Societies, 2015, pp. 27–30, www.refworld.org/reference/countryrep/rcrcs/2015/en/107196. See also Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 213–215. Beaton, Musgrave and Liebl, note 5 above.

[10] *Convention on the Rights of the Child* (20 November 1989) 1577 UNTS 3 (CRC), Article 10(1), www.refworld.org/legal/agreements/unga/1989/en/18815. Executive Committee of the High Commissioner's Programme (ExCom) Conclusion No. 24 (XXXII), 1981, para. 2. ExCom Conclusion No. 85 (XLIX) 1981, para. (w).

safe pathway to international protection.[11] Ensuring enjoyment of the right to family life and family unity can also promote the sustainability of durable solutions.

3. These Guidelines set out relevant legal standards concerning family reunification for refugees and other beneficiaries of international protection, in accordance with international and regional refugee and human rights law. The Guidelines first outline the right to family life and the principle of family unity as they apply to refugees and other beneficiaries of international protection and explain the concepts of family and of family reunification. They then address procedural requirements that may constitute obstacles to family reunification for refugees and other beneficiaries of international protection, including specific challenges for family reunification for children. Finally, the Guidelines discuss other specific issues related to family reunification, including restrictions related to mode of arrival, access to courts and travel documents.

II. The principle of family unity and the right to family life

4. Universal and regional human rights law recognizes "the family as the natural and fundamental group unit of society", which "is entitled to protection by society and the State".[12] The principle of family unity is derived from the universal recognition of the family as a "group unit" and from the right to marry and found a family. The right to maintain a family free from arbitrary, discriminatory or unlawful interference, implies that every person has a right to

[11] ExCom Conclusion No. 88 (L) 1999, para. (b)(i). European Union (EU): Council of the European Union, *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification*, 3 October 2003, OJ L. 251/12-251/18; 3.10.2003, 2003/86/EC (EU Family Reunification Directive), recital 4, www.refworld.org/legal/reglegislation/council/2003/en/36566. UNHCR Expert Roundtable on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons In Need Of International Protection in Brussels, Belgium, 'Summary Conclusions', 4 December 2017, para. 1, www.refworld.org/reference/confdoc/unhcr/2017/en/120836.

[12] *Universal Declaration of Human Rights* (10 December 1948) 217 A (III) (UDHR), Article 16(3), www.refworld.org/legal/resolution/unga/1948/en/11563. *International Covenant on Civil and Political Rights* (16 December 1966) 999 UNTS 171 (ICCPR), Article 23(1), www.refworld.org/legal/agreements/unga/1966/en/17703. *International Covenant on Economic, Social and Cultural Rights* (16 December 1966) 993 UNTS 3 (ICESCR), Article 10(1), www.refworld.org/legal/agreements/unga/1966/en/33423. CRC, note 10 above, preambular para. 5. *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (18 December 1990) 2220 UNTS 3 (CRMW), Article 44, www.refworld.org/legal/agreements/unga/1990/en/27627. *Convention on the Rights of Persons with Disabilities*, 13 December 2006, 2515 UNTS 3 (CRPD), preambular para. (x), www.refworld.org/legal/agreements/unga/2006/en/90142. Council of Europe (CoE), *European Social Charter (Revised)* (3 May 1996) ETS 163, Part I, para. 16 and Part II, Article 16, www.refworld.org/legal/agreements/coe/1996/en/40138. Organization of American States (OAS), *American Convention on Human Rights* (22 November 1969) (Pact of San Jose), Article 17(1), www.refworld.org/legal/agreements/oas/1969/en/20081. Inter-American Commission on Human Rights (IACHR), *Inter-American principles on the human rights of all migrants, refugees, stateless persons and victims of human trafficking*, Resolution 04/19, 7 December 2019, Principle 32, www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf. Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* (27 June 1981) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (Banjul Charter), Article 18(1), www.refworld.org/legal/agreements/oau/1981/en/17306. OAU, *African Charter on the Rights and Welfare of the Child* (11 July 1990) CAB/LEG/24.9/49 (1990), Article 18(1), www.refworld.org/legal/agreements/oau/1990/en/13798. *Arab Charter on Human Rights* (15 September 1994), Article 38(A), www.refworld.org/legal/agreements/las/1994/en/10672.

family life, without distinction of any kind.[13] The Convention on the Rights of the Child (CRC) contains specific provisions on children which are designed to assist them to exercise their right to family life and to maintain family unity.[14]

5. The 1951 Convention and its 1967 Protocol oblige Contracting States to provide protection to refugees, assuring the widest possible exercise of their fundamental rights and freedoms without discrimination.[15] While neither of these treaties refer expressly to family, a right to family life, the principle of family unity or to family reunification, it is clear that refugees are entitled to the right to family life under international human rights law.[16] The 1951 Convention explicitly protects rights previously acquired by a refugee which are attached to marriage,[17] and obliges States to provide administrative assistance when the exercise of any right so requires, including the right to family life.[18] The Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, at which the Convention was adopted, recognizes "that the unity of the family … is an essential right of the refugee".[19] It "recommends Governments to take the necessary measures for the protection of the refugee's family, especially with a view to ensuring that the unity of the refugee's family is maintained" and that child refugees are protected, in particular when unaccompanied.[20] While not legally binding, the Final Act read in conjunction with the Preamble indicates the object and

[13] UDHR, note 12 above, Articles 2, 12, 16(1) and (3). ICCPR, note 12 above, Articles 2(1) and 23(2). ICESCR, note 12 above, Articles 2(2) and 10(1). *International Convention on the Elimination of All Forms of Racial Discrimination* (21 December 1965) 660 UNTS 195 (ICERD), Article 5, www.refworld.org/legal/agreements/unga/1965/en/13974. *Convention on the Elimination of All Forms of Discrimination Against Women* (18 December 1979) 1249 UNTS 13 (CEDAW), Article 16(1), www.refworld.org/legal/agreements/unga/1979/en/13757. CRC, note 10 above, Articles 8(1) and 16(1). CRMW, note 12 above, Article 14. CRPD, note 12 above, Articles 22 and 23. UN Human Rights Committee (HRC), *CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 27 July 1990, para. 5, www.refworld.org/legal/general/hrc/1990/en/38884. CoE, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11, 14 and 15, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16* (4 November 1950) ETS 5, (ECHR), Article 8, www.refworld.org/legal/agreements/coe/1950/en/18688. European Union, *Charter of Fundamental Rights of the European Union* (26 October 2012) 2012/C 326/02 (EU Charter of Fundamental Rights), Articles 7 and 9, www.refworld.org/legal/agreements/eu/2007/en/13901. Pact of San Jose, note 12 above, Articles 11(2) and 17(2). African Charter on the Rights and Welfare of the Child, note 12 above, Article 10. See also F. Nicholson, 'Chapter 55: The Right to Family Reunification', in C. Costello, M. Foster, J. McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press, 2021), pp. 989–990. K. Jastram and K. Newland, 'Family Unity and Refugee Protection', in E. Feller, V. Türk and F. Nicholson (eds), note 1 above, p. 566.

[14] CRC, note 10 above, preambular para. 5 and Articles 5, 7, 8, 9, 10, 16, and 22. See Section VI.

[15] 1951 Convention, note 1 above, preambular para. 2 and Articles 3 and 5. 1967 Protocol, note 1 above, Article I(1).

[16] See paragraph 4.

[17] 1951 Convention, note 1 above, Article 12(2).

[18] 1951 Convention, note 1 above, Article 25(1). E. Lester, 'Article 25 (Administrative Assistance/Aide Administrative)', in A. Zimmermann, T. Einarsen (eds) and F.M. Herrmann (ass. ed.), *The 1951 Convention relating to the Status of Refugees and its 1967 Protocol: A Commentary*, Second Edition (Oxford University Press, 2024), pp. 1273–1292.

[19] UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons* (25 July 1951) A/CONF.2/108/Rev.1, Section IV B, www.refworld.org/legal/leghist/cpsrsp/1951/en/89635.

[20] Ibid.

purpose of the 1951 Convention.[21] This means that it represents an authoritative source of guidance to assist in the interpretation of the Convention's binding provisions.[22]

6. The Executive Committee of the High Commissioner's Programme (ExCom)[23] has repeatedly reiterated the fundamental character of the right to family life in the context of international protection and durable solutions for refugees.[24] It has called on States "to facilitate effective procedures and clear referral pathways for reunification with family members"[25] and recommended that States make every effort to reunite separated families and "ensure that the reunification takes place with the least possible delay".[26] Specific measures identified by ExCom include developing domestic legal frameworks that take into account the human rights of refugees and their families;[27] interpreting the concept of family member(s) generously;[28] recognizing the same legal status for the reunited family member(s) while also providing access to individual asylum procedures;[29] as well as adopting programmes promoting the self-reliance of adult family members to enhance their capacity to support dependent family members.[30] Family unity must also guide action taken on behalf of refugee children, in ensuring their protection and well-being broadly as well as in preventing separation from their families and reuniting them.[31]

7. As an overarching principle of international human rights law, the principle of non-discrimination, enshrined, among other instruments, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, prohibits discrimination on the basis of "race, colour, sex, language, religion,

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[21] Jastram and Newland, note 13 above, p. 570.
[22] *Vienna Convention on the Law of Treaties* (23 May 1969) 1155 UNTS 331, Articles 31(1) and (2), www.refworld.org/legal/agreements/un/1969/en/73676.
[23] UN Economic and Social Council (ECOSOC), *UN Economic and Social Council Resolution 672 (XXV): Establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees*, E/RES/672 (XXV), 30 April 1958, www.refworld.org/legal/resolution/ecosoc/1958/en/18678.
[24] UNHCR Expert Roundtable, 'Summary Conclusions', 2017, note 11 above, para. 4. ExCom Conclusion No. 22 (XXXII) 1981, para. B(2)(h) in the context of mass influx. ExCom Conclusion No. 24 (XXXII) 1981, para. 1. ExCom Conclusion No. 47 (XXXVIII) 1987, para. (d). ExCom Conclusion No. 84 (XLVIII) 1997, para. (a)(i). ExCom Conclusion No. 85 (XLIX) 1998, paras. (u), (v) and (x). ExCom Conclusion No. 88 (L) 1999, para. (a). ExCom Conclusion No. 93 (LIII) 2002, para. (iv). ExCom Conclusion No. 100 (LV) 2004, para. (d) in the context of mass influx. ExCom Conclusion No. 101 (LV) 2004, para. (n), in the context of voluntary repatriation. ExCom Conclusion No. 103 (LVI) 2005, para. (n). ExCom Conclusion No. 104 (LVI) 2005, para. (n)(iv), in the context of integration. ExCom Conclusion No. 105 (LVII) 2006, para. (n)(iii). ExCom Conclusion No. 107 (LVIII) 2007, paras. (n)(iii) and (xviii), in the context of resettlement.
[25] ExCom Conclusion No. 117 (LXXV) 2024, para. (f)(iv).
[26] ExCom Conclusion No. 24 (XXXII) 1981, paras. 1 and 2. ExCom Conclusion No. 15 (XXX) 1979, para. (e). ExCom Conclusion No. 85 (XLIX) 1998, para. (w). ExCom Conclusion No. 88 (L) 1999, para. (b)(i).
[27] ExCom Conclusion No. 85 (XLIX) 1998, para. (x).
[28] ExCom Conclusion No. 24 (XXXII) 1981, para. 5. ExCom Conclusion No. 88 (L) 1999, para. (b)(ii).
[29] ExCom Conclusion No. 24 (XXXII) 1981, para. 8. ExCom Conclusion No. 88 (L) 1999, para. (b)(iii).
[30] ExCom Conclusion No. 88 (L) 1999, para. (b)(v).
[31] ExCom Conclusion No. 47 (XXXVIII) 1987, para. (d). ExCom Conclusion No. 84 (XLVIII) 1997, paras. (a)(i) and (b) (i). ExCom Conclusion No. 88 (L) 1999, para. (c). ExCom Conclusion No. 105 (LVII) 2006, para. (n)(iii). ExCom Conclusion No. 107 (LVIII) 2007, paras. (b)(vi) and (h)(iii).

political or other opinion, national or social origin, property, birth or other status".[32] The principle of non-discrimination requires that all persons are entitled to respect for their human rights regardless of their immigration or other status, except where such distinctions are reasonable and can be objectively justified to achieve a legitimate purpose compatible with human rights standards.[33] This principle of non-discrimination applies in relation to the right to family life and measures impacting upon individuals' family unity.[34]

8. Distinctions between the rights of refugees and other persons in need of international protection who are beneficiaries of complementary forms of international protection, such as subsidiary protection, are often neither necessary nor objectively justified in terms of flight experience and protection needs.[35] In practice, the protection needs of beneficiaries of complementary forms of international protection are generally not of a different nature nor of

[32] UDHR, note 12 above, Article 2. ICCPR, note 12 above, Article 2(1). ICESCR, note 12 above, Article 2(2).
[33] HRC, *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, paras. 11–13, www.refworld.org/legal/general/hrc/1989/en/6268. F. Nicholson, *The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and the Family Definition Applied*, January 2018, 2nd edition, Section 2.1.2., p. 7, www.refworld.org/reference/research/unhcr/2018/en/122578. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of M.A. v. Denmark (Application no. 6697/18) before the European Court of Human Rights*, 21 January 2019, Section 3.3, www.refworld.org/jurisprudence/amicus/unhcr/2019/en/121700. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of J. K. v. Switzerland (Appl. No. 15500/18) before the European Court of Human Rights*, 28 May 2019, Section 3.3, www.refworld.org/jurisprudence/amicus/unhcr/2019/en/122449.
[34] CoE: Commissioner for Human Rights, *Realising the Right to Family Reunification of Refugees in Europe*, 1 June 2017, pp. 23–26, https://ec.europa.eu/migrant-integration/library-document/realising-right-family-reunification-refugees-europe_en. For judgments of the European Court of Human Rights (ECtHR) on the principle of non-discrimination and family reunification, see *Biao v. Denmark*, Application no. 38590/10, ECtHR, Grand Chamber, 24 May 2016, www.refworld.org/jurisprudence/caselaw/echr/2016/en/114050, on the difference in treatment between certain categories of Danish nationals in the context of family reunification; *Pajić v. Croatia*, Application no. 68453/13, ECtHR, 23 February 2016, www.refworld.org/jurisprudence/caselaw/echr/2016/en/114261, on refusal to admit applications for family reunification from same-sex couples; *Hode and Abdi v. The United Kingdom*, Application no. 22341/09, ECtHR, 6 November 2012, www.refworld.org/jurisprudence/caselaw/echr/2012/en/89212, on the difference in treatment between refugees who married post-flight and migrants entitled to family reunification; and *Niedzwiecki v. Germany*, Application no. 58453/00, ECtHR, 15 February 2006, www.refworld.org/jurisprudence/caselaw/echr/2006/en/119154, on the difference in treatment between non-nationals regarding access to child benefits based on the type of residence permit and expected length of stay. On whether a beneficiary of subsidiary protection was in a similar situation to that of a person granted refugee status, the ECtHR concluded in *M.T. and Others v. Sweden* that this question needs to be assessed on a case-by-case basis of the specific circumstances, in particular with regard to the right to family reunification. For the purpose of this case, the Court was willing to assume that the applicant was "in an analogous or relevantly similar situation to that of persons granted refugee status". *M.T. and Others v. Sweden*, Application no. 22105/18, ECtHR, 20 October 2022, paras. 110–111, www.refworld.org/jurisprudence/caselaw/echr/2022/en/124171. See *Submission by the Office of the United Nations High Commissioner for Refugees in the case of J. K. v. Switzerland*, note 33 above, Section 3.4.
[35] Situations of armed conflict and violence frequently involve exposure to serious human rights violations or other serious harm amounting to persecution. They may be rooted in, motivated or driven by, and/or conducted along lines of race, ethnicity, religion, politics, gender or social group divides, or may impact people based on these factors. UNHCR, *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*, 2 December 2016, HCR/GIP/16/12, paras. 13 and 33, www.refworld.org/policy/legalguidance/unhcr/2016/en/113881.

shorter duration than the protection needs of refugees.[36] The same applies in many cases for beneficiaries of temporary protection or stay arrangements. While temporary protection should be used on a temporary basis and not in substitution for refugee status or other forms of international protection, or in a way that would undermine those statuses,[37] in practice it is often used for longer periods of time.[38] Like refugees, beneficiaries of complementary forms of international protection and temporary protection and stay arrangements cannot reasonably be expected to return to their country of origin to exercise their right to family life due to risks of serious harm.[39] Refugees[40] and other persons in need of international protection who are beneficiaries of complementary forms of international protection, such as subsidiary protection, as well as beneficiaries of temporary protection or stay arrangements[41] should therefore have equal access to family reunification to exercise their fundamental right to family life, irrespective of the type of protection status.[42]

9. The principle of family unity and the right to family life are also relevant in the broader context of international protection, including in the determination and recognition of refugee status or any other international protection status such

[36] *Submission by the Office of the United Nations High Commissioner for Refugees in the case of M.A. v. Denmark*, note 33 above, paras. 3.3.3–3.3.5. UNHCR, *Refugee Family Reunification.* UNHCR, *UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*, February 2012, p. 5, www.refworld.org/legal/intlegcomments/unhcr/2012/en/85384. This is also evidenced in practice in the European Union, where the application of protection statuses varies widely. UNHCR, *UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466*, February 2018, p. 33, www.refworld.org/legal/intlegcomments/unhcr/2018/en/120341.

[37] ExCom Conclusion No. 103 (LVI) 2005, para. (l). UNHCR, *Guidelines on Temporary Protection or Stay Arrangements* (TPSA Guidelines), February 2014, para. 9, www.refworld.org/policy/legalguidance/unhcr/2014/en/74916. UNHCR advocates for the use of temporary protection where individual status determination is either not applicable or feasible, or both.

[38] UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, paras. 25 and 27(h), www.refworld.org/reference/annualreport/unhcr/2005/en/58155.

[39] *TPSA Guidelines*, note 37 above, paras. 8 and 16. CoE: Parliamentary Assembly (PACE), Committee on Migration, Refugees and Displaced Persons, *Report on Family reunification of refugees and migrants in Council of Europe member States, by Rapporteur Ulla Sandbæk*, 25 September 2018, para. 28, https://pace.coe.int/en/files/25058.

[40] Including persons recognized as refugees sur place. *B.F. and Others v. Switzerland*, Applications nos. 13258/18, 15500/18, 57303/18 and 9078/20, ECtHR, 4 July 2023, para. 105, www.refworld.org/jurisprudence/caselaw/echr/2023/en/124300. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of J. K. v. Switzerland*, note 33 above, para. 3.3.4.

[41] See UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, note 38 above, para. 27(j). The EU Temporary Protection Directive explicitly entitles beneficiaries of temporary protection to reunite immediately with their family members, even though protection under this Directive is only temporary (maximum 3 years). European Union: Council of the European Union, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, 7 August 2001, 2001/55/EC (EU Temporary Protection Directive), Article 15(3), www.refworld.org/legal/reglegislation/council/2001/en/17729. UNHCR, *TPSA Guidelines*, note 37 above, paras. 13 and 16.

[42] On the situation of asylum-seekers, see paragraph 24. Jastram and Newland, *Family Unity and Refugee Protection*, note 13 above, p. 587. UN Committee on the Rights of the Child (CRC Committee), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, para. 77, www.refworld.org/legal/general/crc/2005/en/38046. PACE, *Resolution 2243 (2018) on family reunification of refugees and migrants in the Council of Europe member States*, 11 October 2018, para. 6, www.refworld.org/legal/resolution/coepace/2018/en/122476. UNHCR, *Persons in need of international protection,* June 2017, www.refworld.org/policy/legalguidance/unhcr/2017/en/121440.

as in assessing the well-founded fear, an internal flight alternative or when assessing exclusion from refugee status under Article 1F of the 1951 Convention; and with regard to the expulsion of a family member from a country of asylum resulting in family separation.[43] These issues are beyond the scope of these Guidelines, which focus on the principle of family unity and the right to family life in the context of family reunification for refugees and other beneficiaries of international protection.

III. The definition of family

10. There is no single, universally accepted legal definition of family. States adopt different definitions of family in their national laws. Some States adopt a narrow definition of a family, sometimes referred to as 'nuclear' family, which is often considered as consisting of spouses and their minor or dependent, unmarried children, minor siblings, and in some instances married minor children.[44] In other contexts, a wider concept of the family is common, including extended family relationships and relying on dependency factors.[45]

11. Essentially, the existence of a family is a question of fact and involves examination of real and close personal ties.[46] What constitutes a family must be determined on a case-by-case basis, requiring an open, flexible approach

[43] Guidance on these legal issues concerning the principle of family unity and the right to family life is available in Jastram and Newland, *Family Unity and Refugee Protection*, note 13 above, Section IV B. See for example on well-founded fear UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Handbook on Procedures), April 2019, HCR/1P/4/ENG/REV, para. 43, www.refworld.org/policy/legalguidance/unhcr/2019/en/123881 and on internal flight alternative UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, para. 25, www.refworld.org/policy/legalguidance/unhcr/2003/en/32047.

[44] ECRE, *Not there yet: Family reunification for beneficiaries of international protection*, February 2023, pp. 11–13, https://ecre.org/wp-content/uploads/2023/02/AIDA-Family-Reunification-February-2023.pdf.

[45] See paragraph 14 for more on the extended family and the concept of dependency. For example: *Chitay Nech et al. v. Guatemala*, Serie C No. 212, IACtHR, 25 May 2010, para. 159, www.refworld.org/docid/4f5a127a2.html. Chad: *Loi No. 027/PR/2020 Portant Asile en Republique du Tchad*, 31 December 2020, Article 5, www.refworld.org/legal/legislation/natlegbod/2020/fr/124254 [in French]. Kenya: *The Refugees Act 2021*, 23 November 2021, Article 2, www.refworld.org/legal/legislation/natlegbod/2021/en/124231. South Africa: *Act No. 130 of 1998, Refugee Act 1998,* 26 November 2008, Section 1(ix), www.refworld.org/docid/4a54bbd4d.html. South Sudan: *Act No. 20, Refugee Act 2012*, 5 June 2012, Article 5(c), www.refworld.org/docid/51499cd02.html. Brazil: *Law No. 9.474 of 1997, establishing arrangements for the implementation of the 1951 Status of Refugees and related provisions*, 23 July 1997, Article 2, www.refworld.org/legal/legislation/natlegbod/1997/en/18339. Ecuador: *Ley Orgánica de Movilidad Humana*, 6 February 2017, Article 1A, www.refworld.org/es/leg/legis/pleg/2017/es/126954 [in Spanish]. Uruguay: *Ley No. 18.076, Derecho al Refugio y a los Refugiados*, 19 December 2006, Article 21, www.refworld.org/es/leg/legis/pleg/2006/es/126549 [in Spanish].

[46] *Kopf and Liberda v. Austria*, Application no. 1598/06, ECtHR, 17 January 2012, para. 35, www.refworld.org/jurisprudence/caselaw/echr/2012/en/148973. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Abdi Ali Mahamud v. the Netherlands (Appl. no. 64534/19) before the European Court of Human Rights*, 8 April 2021, para. 3.1.7, www.refworld.org/jurisprudence/amicus/unhcr/2021/en/123711. UNHCR, *Amicus curiae of the Office of the United Nations High Commissioner for Refugees in the case X and THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL*, 11 December 2019, Record No. 2019/137, para. 18, with further sources, and para. 23, www.refworld.org/jurisprudence/amicus/unhcr/2019/en/123231.

and broad interpretation,[47] considering biological and personal ties, cultural variations as well as material, health-related, emotional or economic dependency factors.[48] The following relevant factors are critical in describing a family and to determine whether a relationship amounts to family life.

12. Children include biological,[49] adoptive,[50] and foster children,[51] as well as children who are under legal or customary custody, such as children cared for under the Kafalah system,[52] or with whom a strong personal relationship

[47] HRC, *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, para. 5, www.refworld.org/legal/general/hrc/1988/en/27539. HRC, *CCPR General Comment No. 19*, note 13 above, para. 2. *Dawood and Another v. Minister of Home Affairs and Others*; *Shalabi and Another v. Minister of Home Affairs and Others*; and *Thomas and Another v. Minister of Home Affairs and Others*, CCT35/99 2000 (8) BCLR 837 (CC), South Africa: Constitutional Court, 7 June 2000, para. 31, www.refworld.org/jurisprudence/caselaw/zafcc/2000/en/114187. IACHR, *Inter-American principles on the human rights of all migrants, refugees, stateless persons and victims of human trafficking*, note 12 above, Principle 32. PACE, *Recommendation 1327 (1997) on Protection and Reinforcement of the Human Rights of Refugees and Asylum-seekers in Europe*, para. 8.7(o), www.refworld.org/legal/resolution/coe/1997/en/33018. PACE, *Recommendation 1686 (2004) on human mobility and the right to family reunion*, 23 November 2004, paras. 7 and 8, www.refworld.org/legal/resolution/coepace/2004/en/114033. PACE, *Resolution 2243 (2018)*, note 42 above, para. 3.

[48] UNHCR Expert Roundtable, 'Summary Conclusions: Family Unity', 2003, note 1 above, para. 8. UNHCR Expert Roundtable 'Summary Conclusions', 2017, note 11 above, para. 8. *L. v. The Netherlands*, Application no. 45582/99, ECtHR, 1 June 2004, para. 36, www.refworld.org/jurisprudence/caselaw/echr/2004/en/114250. *TB v Bevándorlási és Menekültügyi Hivatal*, C-519/18, CJEU, 12 December 2019, paras. 47 and 77, www.refworld.org/jurisprudence/caselaw/ecj/2019/en/148977. *Advisory Opinion OC-21/14, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, OC-21/14, Inter-American Court of Human Rights (IACtHR), 19 August 2014, para. 272, www.refworld.org/jurisprudence/caselaw/iacrthr/2014/en/101499, represents an approach that goes beyond "the traditional notion of a couple and their children" to include other blood relatives and others with no biological relation among whom there are "close personal ties". In 2020, the Council of Europe recalled in its study on standards and practices in family reunification the "need for a more inclusive definition of the family in order to provide for an effective protection of the right to respect for family life to fit the diversity of family situations (dependency, tradition or custom)". CoE, *Family Reunification for Refugee and Migrant Children, Standards and promising practices*, April 2020, p.42, https://rm.coe.int/family-reunification-forrefugee-and-migrant-children-standards-and-pr/16809e8320. For more on the concept of dependency, see paragraph 14.

[49] This includes children born outside marriage, see *Schalk and Kopf v. Austria*, Application no. 30141/04, ECtHR, 24 June 2010, para. 91, www.refworld.org/jurisprudence/caselaw/echr/2010/en/89710; *Elsholz v. Germany*, Application no. 25735/94, ECtHR, Grand Chamber, 13 July 2000, para. 43, www.refworld.org/jurisprudence/caselaw/echr/2000/en/115545; *Keegan v. Ireland*, Application no. 16/1993/411/490, ECtHR, 19 April 1994, para. 44, www.refworld.org/jurisprudence/caselaw/echr/1994/en/115541; *Johnston and Others v. Ireland*, Application no. 9697/82, ECtHR, 18 December 1986, para. 56, www.refworld.org/jurisprudence/caselaw/echr/1986/en/115546; and *Onur v. United Kingdom*, Application no. 27319/07, ECtHR, 17 February 2009, para. 44, www.refworld.org/jurisprudence/caselaw/echr/2009/en/65831.

[50] *Pini and Others v. Romania*, Applications nos. 78028/01 and 78030/01, ECtHR, 22 June 2004, paras. 143–148, www.refworld.org/jurisprudence/caselaw/echr/2004/en/115548. *Topčić-Rosenberg v. Croatia*, Application no. 19391/11, ECtHR, 14 November 2013, para. 38, www.refworld.org/jurisprudence/caselaw/echr/2013/en/114263.

[51] *Moretti et Benedetti c. Italie*, Requête no. 16318/07, ECtHR, 27 April 2010, paras. 48–52, www.refworld.org/jurisprudence/caselaw/echr/2010/fr/114253 [in French].

[52] "In the context of children's care, Kafalah is defined as the commitment by an individual or family (kafil) to voluntarily take responsibility for the daily care, education, safety, and protection of a child (makful) deprived of family care, in the same way a parent would do for their biological child". UNICEF, *An Introduction to Kafalah*, 2023, p. 4, www.unicef.org/esa/media/12451/file/An-Introduction-to-Kafalah-2023.pdf. Under the 1996 Child Protection Convention, which applies to protection measures for children in cross-border situations, States are required to recognize foster care arrangements, including under the Kafalah system, put in place in another country. Hague Conference on Private International Law (HCCH), *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (1996 Child Protection Convention), 19 October 1996, Articles 3(e) and 23,

exists.[53] Where a child's parents separate or divorce, they both maintain a family relationship with the child and the child with both parents.[54]

13. Spouses, including same-sex couples,[55] include legally recognized married spouses, but also spouses who have entered a customary, religious,[56]

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https://assets.hcch.net/docs/f16ebd3d-f398-4891-bf47-110866e171d4.pdf. *Y.B. and N.S. v. Belgium*, CRC/C/79/D/12/2017, CRC Committee, 27 September 2018, paras. 8.11 and 8.12, www.refworld.org/jurisprudence/caselaw/crc/2018/en/122480. *SM v Entry Clearance Officer, UK Visa Section*, C-129/18, CJEU, Grand Chamber, 26 March 2019, paras. 68–73, www.refworld.org/jurisprudence/caselaw/ecj/2019/en/148978. *Chbihi Loudoudi et autres c. Belgique*, Requête no. 52265/10, ECtHR, 16 December 2014, paras. 78 and 79, www.refworld.org/jurisprudence/caselaw/echr/2014/fr/148974 [in French].

[53] CRC Committee, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1),* 29 May 2013, CRC/C/GC/14, paras. 59 and 60, www.refworld.org/legal/general/crc/2013/en/95780. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW Committee) and CRC Committee, *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, para. 27, www.refworld.org/legal/general/cmw/2017/en/119567. *M.K.A.H. v. Switzerland*, CRC/C/88/D/95/2019, CRC Committee, 6 October 2021, para. 10.12, www.refworld.org/jurisprudence/caselaw/crc/2021/en/123932. *X., Y. and Z. v. United Kingdom*, Application no. 21830/93, ECtHR, Grand Chamber, 22 April 1997, para. 37, www.refworld.org/jurisprudence/caselaw/echr/1997/en/93742, concerning a female-to-male transsexual and his child born by artificial insemination.

[54] *Ciliz v. The Netherlands*, Application no. 29192/95, ECtHR, 11 July 2000, para. 59, www.refworld.org/jurisprudence/caselaw/echr/2000/en/94269, citing *Berrehab v. The Netherlands*, Application no. 10730/84, ECtHR, 28 May 1988, para. 21, www.refworld.org/jurisprudence/caselaw/echr/1988/en/93426 and *Keegan v. Ireland*, note 49 above, para. 50. and *M.P.E.V. and Others v. Switzerland*, Application no. 3910/13, ECtHR, 8 July 2014, para. 57, www.refworld.org/jurisprudence/caselaw/echr/2014/en/100415. *Mustafa and Armağan Akın v. Turkey*, Application no. 4694/03, ECtHR, 6 April 2010, para. 19, www.refworld.org/jurisprudence/caselaw/echr/2010/en/114254. See also generally, PACE, Committee on Migration, Refugees and Displaced Persons, *Position paper on family reunification*, 2 February 2012, AS/Mig (2012) 01, para. 11, www.refworld.org/policy/legalguidance/coepace/2012/en/114035.

[55] *Schalk and Kopf v. Austria*, note 49 above, paras. 92–94. *P.B. and J.S. v. Austria*, Application no. 18984/02, ECtHR, 22 July 2010, para. 30, www.refworld.org/jurisprudence/caselaw/echr/2010/en/114259. *X. and Others v. Austria*, Application no. 19010/07, ECtHR, Grand Chamber, 19 February 2013, para. 95, www.refworld.org/jurisprudence/caselaw/echr/2013/en/114267. *Vallianatos and Others v. Greece*, Applications nos. 29381/09 and 32684/09, ECtHR, Grand Chamber, 7 November 2013, paras. 73–74, www.refworld.org/jurisprudence/caselaw/echr/2013/en/115392, finding a violation of Article 8 read in conjunction with Article 14 ECHR. *Taddeucci et McCall c. Italie*, Requête no. 51362/09, ECtHR, 30 June 2016, paras. 97–99, www.refworld.org/jurisprudence/caselaw/echr/2016/fr/114262 [in French]. *Pajić v. Croatia*, note 34 above, para. 85. *Caso Atala Riffo y Niñas v. Chile*, IACtHR, 24 February 2012, para. 177, www.refworld.org/jurisprudence/caselaw/iacrthr/2012/es/85676. EU Family Reunification Directive, note 11 above, recital 5, requiring States to "give effect to the provisions of this Directive without discrimination on the basis of … sexual orientation". Examples of national jurisprudence and legislation recognizing same-sex marriages or civil unions include: *Sunil Babu Pant and Others v Nepal Government and others 261-286 [Decision on the rights of Lesbian, Gay, Bisexual, Transsexual and Intersex (LGBTI) People]*, Writ No. 914 of 2007, Nepal: Supreme Court of Nepal, p. 286, www.refworld.org/jurisprudence/caselaw/nepsc/2007/en/149211. *Sentencia C-577 de 2011*, Colombia: Corte Constitucional de Colombia, Resuelve Cuarto, Quinto, www.refworld.org/es/jur/jur/colcc/2011/es/149214 [in Spanish]. South Africa: The Civil Union Act 17 of 2006, GoN 1208, G. 29441, 30 November 2006, Section 1, https://www.saflii.org/za/legis/consol_act/cua2006139.pdf, Australia: Act No. 62 of 1958, Migration Act 1958 - Volume 1, No. 62, 1958, 8 October 1958, Section 5F(1), www.refworld.org/legal/legislation/natlegbod/1958/en/98186. Amendments to the Thai Civil and Commercial Code ensure full legal protection for same-sex couples, including registering their marriage and full adoption and inheritance rights. Thailand: Civil and Commercial Code Amendment Act (No. 24) B.E. 2567 (2024), Volume 141 Part 58 A Page 1, 24 September 2024, https://ratchakitcha.soc.go.th/documents/36482.pdf [in Thai]. An overview of States' laws and practices regarding the same-sex partnerships in the context of family reunification is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 179–181.

[56] *Abdulaziz, Cabales and Balkandali v. UK*, Applications nos. 9214/80; 9473/81; 9474/81, ECtHR, 28 May 1985, para. 63, www.refworld.org/jurisprudence/caselaw/echr/1985/en/97228.

common-law, or proxy[57] marriage, as well as those engaged to be married[58] or who have established a stable, long-term partnership.[59] Relevant factors to determine whether a relationship amounts to family life may include cohabitation, the length of the relationship, and a demonstrated commitment to each other by having children.[60] A lack of cohabitation, however, does not exclude the existence of a family.[61] This is the case for example in situations of separation where one partner continues to support the other,[62] or where families cannot live together due to disruptions related to flight.[63] Marriage is a strong indication for the de facto existence of a family. Most States recognize a marriage if it is validly contracted according to the legal norms applicable in the State where the marriage was solemnized, unless the recognition is against public policy.[64] A marriage is considered unlawful under international human rights law when forced, i.e. entered without the free and full consent of one of the spouses.[65] Children are generally considered to be incapable of giving informed consent or of exercising the right of refusal in the context of marriage

[57] Marriages concluded by proxy are marriages where one party is not present at the ceremony. *Hamza and Another v. Minister for Justice, Equality and Law Reform* [2010] IEHC 427, Ireland: High Court, 25 November 2010, para. 23, www.refworld.org/jurisprudence/caselaw/irlhc/2010/en/22224 and *Hamza and Another v. Minister for Justice, Equality and Law Reform*, [2013] IESC 9, Ireland: Supreme Court, 27 February 2013, paras. 53 and 54, www.refworld.org/jurisprudence/caselaw/irlsc/2013/en/90680.

[58] *Abdulaziz, Cabales and Balkandali v. UK*, note 56 above, para. 62. A. Edwards, 'Human Rights, Refugees, and the Right "To Enjoy" Asylum', *International Journal of Refugee Law* (2005) Vol.17(2), pp. 316–317.

[59] *Benjamin Ngambi and Marie-Louise Nébol v. France*, CCPR/C/81/D/1179/2003, HRC, 16 July 2004, para. 6.4, www.refworld.org/jurisprudence/caselaw/hrc/2004/en/22028. *Hendrick Winata and So Lan Li v. Australia*, CCPR/C/72/D/930/2000, HRC, 16 August 2001, para. 2.1, www.refworld.org/jurisprudence/caselaw/hrc/2001/en/93905. CRMW, note 12 above, Article 4. See, among many authorities, *Marckx v. Belgium*, ECtHR, Application no. 6833/74, ECtHR, 13 June 1979, para. 31, www.refworld.org/jurisprudence/caselaw/echr/1979/en/17191; *Keegan v. Ireland*, note 49 above, para. 44; *Kroon and Others v. The Netherlands*, Application no. 18535/91, ECtHR, 27 October 1994, para. 30, www.refworld.org/jurisprudence/caselaw/echr/1994/en/114141; *X., Y. and Z. v. United Kingdom*, note 53 above, para. 36; *Z.H. and R.H. v. Switzerland*, Application no. 60119/12, ECtHR, 8 December 2015, para. 42, www.refworld.org/jurisprudence/caselaw/echr/1994/en/114141; *Caso Atala Riffo y Niñas v. Chile*, note 55 above, para. 142. See also *Advisory Opinion OC-21/14*, note 48 above. Australia: Migration Act 1958, note 55 above, Section 5G(2)(a). EU Family Reunification Directive, note 11 above, Article 4(3), referring to "registered partnerships". ECRE, *Not there yet: Family reunification for beneficiaries of international protection*, note 44 above, pp. 11–13.

[60] See *X., Y. and Z. v. United Kingdom*, note 53 above, para. 36 and *Z.H. and R.H. v. Switzerland*, note 59 above, para. 42.

[61] *Berrehab v. The Netherlands*, note 54 above, para. 21. See also *Kroon and Others v. The Netherlands*, note 59 above, para. 30. *Bundesrepublik Deutschland v XC*, C-279/20, CJEU, 1 August 2022, para. 69 www.refworld.org/jurisprudence/caselaw/ecj/2022/en/148979 and *Bundesrepublik Deutschland v SW, BL and BC*, Joined Cases C-273/20 and C-355/20, CJEU, 1 August 2022, para. 68, www.refworld.org/jurisprudence/caselaw/ecj/2022/en/148980.

[62] *M.P.E.V. and Others v. Switzerland*, note 54 above, para. 56.

[63] *Bundesrepublik Deutschland v XC*, note 61 above, para. 65 and *Bundesrepublik Deutschland v SW, BL and BC*, note 61 above, para. 64.

[64] Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 171–172. Article 12(2) of the 1951 Convention requires that previously acquired rights attached to marriage are to be respected by Contracting States, unless the marriage would be against the law of the recognizing State. 1951 Convention, note 1 above, Article 12(2).

[65] ICCPR, note 12 above, Article 23(3). ICESCR, note 12 above, Article 10(1). CEDAW, note 13 above, Article 16(1)(b). *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (7 November 1962) 521 UNTS 231, Article 1(1), www.refworld.org/legal/agreements/unga/1962/en/46882. *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (7 September 1956) 266 UNTS 3, Article 1(c)(i), www.refworld.org/legal/resolution/ecosoc/1956/en/116014. See UNHCR, *Guidance on child marriage: programming for married girls and unmarried girls at-risk in forced displacement and crisis contexts*, 2024 [Forthcoming].

because they lack the capacity and maturity to fully understand marriage.[66] Under international human rights law, polygamous marriages violate the dignity of women, are in breach of the principle of non-discrimination and are incompatible with equal rights regarding marriage.[67] Despite a marriage being unlawful, family life may nevertheless exist as a matter of fact due to real and close personal ties, in particular if children have resulted from such marriage.[68] The marital status of the parents has no effect on the family relationship of children with their parents.[69]

14. Beyond the narrow definition of family, the extended family[70] and the concept of dependency[71] are central to the factual identification of family members.[72] In general, a dependant is someone who depends for their existence substantially and directly on a relative, in particular for economic reasons, but also taking into account material, health-related, social and emotional considerations, as

[66] UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) and CRC Committee, *Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices*, CEDAW/C/GC/31/Rev.1 and CRC/C/GC/18/Rev.1, 8 May 2019, paras. 20–23, www.ohchr.org/en/documents/general-comments-and-recommendations/joint-general-recommendation-no-31-committee. This is notwithstanding that Article 1 of the CRC defines a child "every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier", see CRC, note 10 above, Article 1. CEDAW, note 13 above, Article 16(2). CEDAW Committee, *General Recommendation No. 21: Equality in Marriage and Family Relations*, 1994, paras. 36–38, www.refworld.org/legal/general/cedaw/1994/en/61456. UN Human Rights Council, *Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children*, 24 January 2007, A/HRC/4/23, para. 21, www.refworld.org/reference/themreport/unhrc/2007/en/41454. African Charter on the Rights and Welfare of the Child, note 12 above, Article 21(2).

[67] CEDAW Committee and CRC Committee, *Joint General Recommendation/General Comment No. 31 and No. 18*, note 66 above, para. 25. HRC, *CCPR General Comment No. 28: Article 3 (The equality of rights between men and women)*, 29 March 2000, para. 24, www.refworld.org/legal/general/hrc/2000/en/38892. CEDAW Committee, *General Recommendation No. 21: Equality in marriage and family relations*, note 66 above, para. 14. EU Family Reunification Directive, note 11 above, recital 11.

[68] See paragraph 11 on the existence of a family being a question of fact.

[69] UNHCR, *Resettlement Handbook*, 2023, '3.1 Overarching principles in resettlement: AGD and family unity', www.unhcr.org/resettlement-handbook/3-resettlement-submission-categories/3-1-overarching-principles/. *Boughanemi v. France*, Application no. 16/1995/522/608, ECtHR, 27 March 1996, para. 35, www.refworld.org/jurisprudence/caselaw/echr/1996/en/55508. *E1510/2015 ua*, Austria: Constitutional Court of Austria (Verfassungsgerichtshof), 23 November 2015, para. III (4), www.refworld.org/jurisprudence/caselaw/autfcca/2015/en/98303 [in German]. *H.A.H. v. S.A.A. and Others*, Ireland: Supreme Court, [2017] IESC 40, 15 June 2017, para. 118, www.refworld.org/jurisprudence/caselaw/irlsc/2017/en/119575.

[70] *Chitay Nech et al. v. Guatemala*, note 45 above, para. 159, recognizing "the special significance that the coexistence of the family has in the context of an indigenous family, which is not limited to the familial nucleus but also includes the distinct generations that make up the family and includes the community of which the family forms a part".

[71] ExCom Conclusion No. 117 (LXXV) 2024, para. (f)(iv).

[72] UNHCR, *Resettlement Handbook*, note 69 above. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Abdi Ali Mahamud v. the Netherlands*, 2021, note 46 above, Section 3.2. European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU (EU Qualification Directive), recital 19, www.refworld.org/legal/reglegislation/council/2011/en/84781.

well as cultural norms.[73] However, being a dependant does not require complete dependence, such as that of a child's dependence upon an adult, but can be mutual or partial, as the following examples show. Dependency may usually be assumed to exist when a person is under the age of 18 years, but family life may continue after reaching the age of majority if the relationship is continuous and has subsisted for some considerable time, the individual remains part of the household, has not founded a family of their own, or retains other economic, social or emotional ties.[74] Dependency should be recognized if a person is living with a disability which impairs their capacity for self-support, either permanently[75] or for a period expected to be of long duration. Other adult close family members may also be dependants, such as elderly parents.[76]

[73] *Secretary of State for the Home Department v. Muhammad Sazzadur Rahman and Others*, C-83/11, CJEU, 5 September 2012, para. 23, www.refworld.org/jurisprudence/caselaw/ecj/2012/en/116017. See also *Reyes v. Migrationsverket*, C-423/12, CJEU, 16 January 2014, paras. 21–24, www.refworld.org/jurisprudence/caselaw/ecj/2014/en/115554, on the question of financial dependency in the context of the EU Free Movement Directive, which in Article 2(2) defines 'family' more broadly as meaning the spouse; registered partner; direct descendants under the age of 21 or dependants and those of the spouse or partner; dependent direct relatives in the ascending line and those of the spouse or partner. *Murat Dereci and Others v. Bundesministerium für Inneres*, View of Advocate General Mengozzi, C-256/11, CJEU, 29 September 2011, para. 48, www.refworld.org/jurisprudence/caselaw/ecj/2011/en/114028, although the judgment itself does not address the meaning of dependency. *O. and S. v. Maahanmuuttovirasto (C-356/11) and Maahanmuuttovirasto v. L.*, C-357/11, CJEU, Opinion of Advocate General Bot, 27 September 2012, para. 79, www.refworld.org/jurisprudence/caselaw/ecj/2011/en/114028. See also C. Costello, *The Human Rights of Migrants and Refugees in European Law* (Oxford University Press, 2016), p. 138. UNHCR, *Resettlement Handbook*, '4.3 The resettlement Needs Assessment and Initial Review', www.unhcr.org/resettlement-handbook/4-managing-resettlement-activities/4-3-the-resettlement-needs-assessment/.

[74] *Kwakye-Nti et Dufie c. Pays Bas*, Requête no. 31519/96, ECtHR, Décision sur la recevabilité, 7 November 2000, www.refworld.org/jurisprudence/caselaw/echr/2000/fr/114249 [in French]. *Ezzouhdi c. France*, Requête no. 47160/99, ECtHR, 13 February 2001, para. 34, www.refworld.org/jurisprudence/caselaw/echr/2001/fr/116021 [in French]. *Slivenko v. Latvia*, Application no. 48321/99, ECtHR, Grand Chamber, 9 October 2003, para. 97, www.refworld.org/jurisprudence/caselaw/echr/2003/en/20443, on developing a network of personal, social and economic relations that make up the private life of every person. *A.W. Khan v. UK*, Application no. 47486/06, ECtHR, 12 January 2010, paras. 32 and 34, www.refworld.org/jurisprudence/caselaw/echr/2010/en/71114. *Maslov v. Austria*, Application no. 1638/03, ECtHR, 22 March 2007, paras. 36 and 42, www.refworld.org/jurisprudence/caselaw/echr/2007/en/40795. *Maslov v. Austria*, Application no. 1638/03, ECtHR, Grand Chamber, 23 June 2008, paras. 62 and 63, www.refworld.org/jurisprudence/caselaw/echr/2008/en/114252, referring also to earlier authorities. *A.A. v. United Kingdom*, Application no. 8000/08, ECtHR, 20 September 2011, paras. 46–49, www.refworld.org/jurisprudence/caselaw/echr/2011/en/114042. *Moustaquim v. Belgium*, Application no. 12313/86, ECtHR, 18 February 1991, paras. 36 and 45, www.refworld.org/jurisprudence/caselaw/echr/1991/en/18500. *Boughanemi v. France*, note 69 above. *Azerkane v. The Netherlands*, Application no. 3138/16, ECtHR, 2 June 2020, paras. 45 and 64, www.refworld.org/jurisprudence/caselaw/echr/2020/en/148975. *Bundesrepublik Deutschland v XC*, note 61 above, paras. 54, 67, 69.

[75] In *CR, GF, TY v. Landeshauptmann von Wien*, the Court of Justice of the European Union (CJEU) held that the adult sister of an unaccompanied child must be granted an entry and residence permit in the specific situation where the right of the child to be reunified with the parents is dependent on the admission of the sister who is living with a serious illness in a situation of total and permanent dependence on the parents. *CR, GF, TY v. Landeshauptmann von Wien*, C-560/20, CJEU, 30 January 2024, paras. 60 and 61, www.refworld.org/jurisprudence/caselaw/ecj/2024/en/148328.

[76] *Kisileva v. Sweden*, CCPR/C/140/D/3245/2018, HRC, 25 March 2024, para. 7.6, www.refworld.org/jurisprudence/caselaw/hrc/2024/en/148964. UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons*, 8 December 1995, E/1996/22, para. 31, www.refworld.org/legal/general/cescr/1995/en/27839. Banjul Charter, note 12 above, Article 29 (1). South Africa: Act No. 130 of 1998, Refugees Act (Amended), No. 130, 20 November 1998, Chapter 1(ix), www.refworld.org/legal/legislation/natlegbod/1998/en/105119. South Sudan: Act No. 20, Refugee Act of 2012, 5 June 2012, Article 5(c) www.refworld.org/legal/legislation/natlegbod/2012/en/91073. UNHCR, *Handbook on Procedures*, note 43 above, para. 185.

Close ties between near relatives such as grandparents and grandchildren;[77] aunts, uncles, cousins, nieces and nephews;[78] and adult siblings[79] may also form the basis for family life and dependency.

IV. Family reunification

15. Ensuring the right to family life and the principle of family unity requires States not only to refrain from conduct that would result in family separation,[80] but also to take measures maintaining family unity and, where needed, allowing family life and family unity to be restored, i.e. the reunification of separated families.[81] Practical difficulties and challenges faced by States in the reunification of separated families do not absolve them of their positive obligations to protect,

[77] *Marckx v. Belgium*, ECtHR, 1979, note 59 above, para. 45. *L. v. Finland*, Application no. 25651/94, ECtHR, 27 April 2000, para. 101, www.refworld.org/jurisprudence/caselaw/echr/2000/en/119623. *Price v. United Kingdom*, Application no. 12402/86, European Commission on Human Rights, Admissibility Decision, 9 March 1988, www.refworld.org/jurisprudence/caselaw/coecommhr/1988/en/114038. *Bronda v. Italy*, Application no. 40/1997/824/1030, ECtHR, 9 June 1988, para. 51, www.refworld.org/jurisprudence/caselaw/echr/1998/en/114056.

[78] *M.K.A.H. v. Switzerland*, CRC/C/88/D/95/2019, CRC Committee, 6 October 2021, para. 10.12, www.refworld.org/jurisprudence/caselaw/crc/2021/en/123932, concerning a child and the importance of his relationship with his uncle and cousins for his development and social reintegration. *Boyle v. United Kingdom*, Application no. 16580/90, European Commission on Human Rights, 9 February 1993, paras. 41–47, www.refworld.org/jurisprudence/caselaw/coecommhr/1993/en/114045, concerning the family and private life of an uncle and his minor nephew. *Butt v. Norway*, Application no. 47017/09, ECtHR, 4 December 2012, para. 76, www.refworld.org/jurisprudence/caselaw/echr/2012/en/114057, concerning the family and private life of a nephew and niece with their uncle and aunt. *F.N. v. United Kingdom*, Application no. 3202/09, ECtHR, admissibility decision, 17 September 2013, para. 36, www.refworld.org/jurisprudence/caselaw/echr/2013/en/114060, concerning the family and private life of an adult niece and her aunt. European Union: Council of the European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, 29 June 2013, 604/2013 (Dublin III Regulation), Article 2 (g) and (h) and Article 8, www.refworld.org/legal/reglegislation/council/2013/en/14874.

[79] UNHCR, *The Office of United Nations High Commissioner for Refugees ('UNHCR') Statement on family reunification for beneficiaries of international protection Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of CR, GF, TY v. Landeshauptmann von Wien (C-560/20)*, 22 June 2021, Section 4.4, www.refworld.org/jurisprudence/amicus/unhcr/2021/en/123879.

[80] HRC, *CCPR General Comment No. 16*, note 47 above, paras. 3–4.

[81] ExCom Conclusion No. 24 (XXXII), 1981, para. 1. CRC, note 10 above, Article 9. CMW and CRC Committees, *Joint General Comment No. 4 and No. 23*, note 53 above, para. 27. *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, Conclusion 13, www.refworld.org/legal/resolution/rri/1984/en/64184, acknowledging that the "reunification of families constitutes a fundamental principle in regard to refugees and one which should be the basis for the regime of humanitarian treatment in the country of asylum, as well as for facilities granted in cases of voluntary repatriation". *Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America*, 16 November 2004, www.refworld.org/legal/resolution/rri/2004/en/31200, recognizing the unity of the family as a fundamental human right of refugees and recommending the adoption of mechanisms to ensure its respect. *Advisory Opinion OC-21/14*, IACtHR, 2014, note 48 above, para. 261. HRC, *CCPR General Comment No. 19*, note 13 above, para. 5. HRC, *CCPR General Comment No. 15: The Position of Aliens Under the Covenant*, 11 April 1986, para. 5, www.refworld.org/legal/general/hrc/1986/en/38724. *Mehemi v. France (No. 2)*, Application no. 53470/99, ECtHR, 10 April 2003, para. 45, www.refworld.org/jurisprudence/caselaw/echr/2003/en/94186, formulating the general principle "where the existence of a family tie has been established, the State must in principle act in a manner calculated to enable that tie to be developed and take measures that will enable the family to be reunited". EU Family Reunification Directive, note 11 above, recital 4. *European Parliament v. Council of the European Union*, C-540/03, CJEU, 27 June 2006, para. 69, www.refworld.org/jurisprudence/caselaw/ecj/2006/en/68521. *Mimoun Khachab v. Subdelegación del Gobierno en Álava*, C-558/14, CJEU, 21 April 2016, para. 26, www.refworld.org/jurisprudence/caselaw/ecj/2016/en/114032. PACE, *Recommendation 1686 (2004)*, note 47 above, para. 6.

promote and fulfil the right to family life and the principle of family unity of refugees and other beneficiaries of international protection. Refusal to maintain or restore family unity and reunite families may be considered interference with the right to family life. In situations where a family's most realistic possibility for enjoying family life is in a specific country, as is the case for refugees and other beneficiaries of international protection in their countries of asylum, such countries have the responsibility to ensure family reunification in their countries and should allow family members to enter.[82] Because of the very nature of being a refugee or otherwise in need of international protection, it cannot reasonably be expected of the family to exercise their right to family life in the country of origin. States should therefore allow and take steps to facilitate family reunification for refugees and other beneficiaries of international protection.[83] Refugees and other beneficiaries of international protection should benefit from

[82] *Gonzalez v. Republic of Guyana*, CCPR/C/98/D/1246/2004, HRC, 21 May 2010, para. 14.3, www.refworld.org/jurisprudence/caselaw/hrc/2010/en/73140. *Mohamed El-Hichou v. Denmark*, No. 1554/2007, HRC, CCPR/C/99/D/1554/2007 (2010), para. 7.3, www.refworld.org/jurisprudence/caselaw/hrc/2010/en/119151. In *Gül v. Switzerland* and *Ahmut v. The Netherlands,* the ECtHR found no violation of Article 8 of the ECHR on the grounds that it was possible, even if difficult, for family members to exercise family life in the country of origin. *Gül v. Switzerland*, ECtHR, 1996, Application no. 23218/94, ECtHR, 19 February 1996, www.refworld.org/jurisprudence/caselaw/echr/1996/en/95599 and *Ahmut v. The Netherlands*, Application no. 21702/93, ECtHR, 28 November 1996, www.refworld.org/jurisprudence/caselaw/echr/1996/en/16925. In contrast, the ECtHR found in *Şen v. The Netherlands* major obstacles in the return of a migrant family to the country of origin because of having established family life in the Netherlands with two more children born there and because of the young age of the reuniting child. The ECtHR reached the same conclusion in the context of international protection in *Tuquabo-Tekle and Others v. The Netherlands*, noting that the child faced specific gender and age-related risks in the country of origin. In both cases family reunification was found to be the most adequate way to develop family life together. *Şen c. Pays Bas*, Requête no. 31465/96 ECtHR, 21 December 2001, www.refworld.org/jurisprudence/caselaw/echr/2001/fr/148976 [in French] and *Tuquabo-Tekle and Others v. The Netherlands,* Application no. 60665/00, ECtHR, 1 December 2005, www.refworld.org/jurisprudence/caselaw/echr/2005/en/20377. See also UNHCR Expert Roundtable, 'Summary Conclusions: Family Unity', 2003, note 1 above, paras. 5 and 9 and UNHCR Expert Roundtable, 'Summary Conclusions', 2017, note 11 above, para. 27.

[83] ExCom Conclusion No. 117 (LXXV) 2024, para. (f)(iv). The CMW and CRC Committees, stated in their Joint General Comment No. 4 and No. 23 that the "protection of the right to a family environment frequently requires that States not only refrain from actions which could result in family separation or other arbitrary interference in the right to family life, but also take positive measures to maintain the family unit, including the reunion of separated family members". CMW and CRC Committees, *Joint General Comment No. 4 and No. 23*, note 53 above, para. 27. *Farag El Dernawi v. Libya*, No. 1143/2002, CCPR/C/90/D/1143/2002, HRC, 31 August 2007, para. 6.3, www.refworld.org/jurisprudence/caselaw/hrc/2007/en/115469. CRC Committee, *General Comment No. 6*, note 42 above, paras. 81–83. International humanitarian law requires for States to facilitate family reunification for families separated by armed conflict and to encourage the work of organizations engaging in reunifying families: *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (12 August 1949) 75 UNTS 287 (Fourth Geneva Convention), Article 26, www.refworld.org/legal/agreements/icrc/1949/en/32227. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (8 June 1977) 1125 UNTS 3 (Protocol I), Article 74, www.refworld.org/legal/agreements/icrc/1977/en/104942. In *Tanda-Muzinga v. France*, the ECtHR confirmed that "the family unity is an essential right of refugees and that family reunion is an essential element in enabling persons who have fled persecution to resume a normal life". *Tanda-Muzinga v. France*, Application no. 2260/10, ECtHR, 10 July 2014, para. 75, www.refworld.org/jurisprudence/caselaw/echr/2014/en/100424. *Mugenzi c. France*, Requête no. 52701/09, ECtHR, 10 July 2014, para. 54, www.refworld.org/jurisprudence/caselaw/echr/2014/fr/100425 [in French]. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of J. K. v. Switzerland*, note 33 above, para. 3.2.4. *New York Declaration for Refugees and Migrants, Resolution adopted by the General Assembly on 19 September 2016*, A/RES/71/1, 3 October 2016, para. 79, www.refworld.org/legal/resolution/unga/2016/en/112142. EU Family Reunification Directive, note 11 above, recital 8. See also Nicholson, 'The Right to Family Reunification', note 13 above, pp. 993–995. Jastram and Newland, note 13 above, pp. 555–603.

a more favourable family reunification regime than other foreigners.[84] This is in particular the case when children are involved and/or the concerned family members have other protection needs.[85]

16. The particular situation of refugees and other beneficiaries of international protection is critical and is evidence of their vulnerable situation.[86] Family reunification in the receiving country[87] is often the only safe pathway for refugees to exercise their right to family life. Departing family members[88] may have international protection needs in their own right and be eligible for refugee status or a complementary form of international protection.[89] Countries of origin and other countries where family members may be present should allow departing family members to leave that country, where they wish to do so, regardless of their status, and to travel to the receiving country.[90] As such, countries of origin and other countries should facilitate the reunification of refugee families in the receiving country, including by providing required documents such as exit permissions, illegal stay waivers as well as travel documents, where needed.[91]

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[84] *Mugenzi c. France*, note 83 above. EU Family Reunification Directive, note 11 above, recital 8. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of J. K. v. Switzerland*, note 33 above, para. 3.2.3.

[85] *Tuquabo-Tekle and Others v. The Netherlands*, note 82 above, paras. 47–50. *Jeunesse v. The Netherlands*, Application no. 12738/10, ECtHR, Grand Chamber, 3 October 2014, para. 118, www.refworld.org/jurisprudence/caselaw/echr/2014/en/114142. *M.A. v. Denmark*, Application no. 6697/18, ECtHR, Grand Chamber, 9 July 2021, para. 135 iv, www.refworld.org/jurisprudence/caselaw/echr/2021/en/123893. CRC Committee, *General Comment No. 6*, note 42 above, para. 77. *Brazil Declaration and Plan of Action* (3 December 2014) (Brazil Declaration), www.refworld.org/legal/resolution/rri/2014/en/102557, recommending strengthening the differentiated approach to age, gender and diversity in decisions regarding applications for family reunification. PACE, *Resolution 2243 (2018)*, note 42 above, para. 5, stating that children must not be discriminated based on the family they come from and that particular attention needs to be paid to vulnerable persons. For children and family reunification, see Section VI.

[86] *Tanda-Muzinga v. France*, note 83 above, para. 75.

[87] For the purposes of these Guidelines, the term 'receiving country' is used to identify the direction of movement of family reunification to a country where the receiving family member has been granted refugee status or another form of international protection.

[88] For the purposes of these Guidelines, the term 'countries or departure' is used to identify the direction of movement of family reunification from a country where the departing family member(s) is/are present and intend(s) to move away from. This can be the country of origin, or another country where they may or may not have found some form of international protection.

[89] A person is a refugee within the meaning of the 1951 Convention as soon as they fulfil the criteria contained in the definition. This occurs prior to the time at which the status is formally determined. Recognition of the refugee or other protection status does not therefore make the person a refugee but declares them to be one. UNHCR, *Handbook on Procedures*, note 43 above, para. 28. The Grand Chamber of the CJEU held in *M v Ministerstvo vnitra* that "the fact of being a 'refugee' for the purposes of Article 2(d) of [the EU Qualification Directive of 2013] and Article 1(A) of the [1951] Convention is not dependent on the formal recognition of that fact through the granting of 'refugee status'". *M v Ministerstvo vnitra*, C-391/16, CJEU, Grand Chamber, para. 92, www.refworld.org/jurisprudence/caselaw/ecj/2019/en/149208. See also *G. v G.* [2021] UKSC 9, United Kingdom: Supreme Court, 19 March 2021, para. 81, www.refworld.org/jurisprudence/caselaw/uksc/2021/en/123628.

[90] UDHR, note 12 above, Article 13. ICCPR, note 12 above, Article 12(2). Banjul Charter, note 12 above, Article 12. Pact of San Jose, note 12 above, Article 22. ECHR, note 13 above, Protocol 4, Article 2. *Case of S.E. v. Serbia*, Application no. 61365/16, ECtHR, 11 July 2023, paras. 46–50 and 88–89, www.refworld.org/jurisprudence/caselaw/echr/2023/en/124302.

[91] ExCom Conclusion No. 1 (XXVI) 1975, para. (f). ExCom Conclusion No. 24 (XXXII) 1981, paras. 2 and 4. *Farag El Dernawi v. Libya*, note 83 above, paras. 6.2 and 6.3.

17. For the purpose of family reunification, a family – which may have been formed prior, during or post[92] flight – includes, at the very minimum, members of the 'nuclear' or close family.[93] However, States are encouraged to apply the family definition liberally, based on broad criteria and factual circumstances,[94] and give positive consideration to the inclusion of other family members based on material, physical, health-related, emotional or economic ties or other dependency factors.[95] It involves taking into account the different concepts of family that may apply in different societies, including countries of origin. It also involves considering the impact a person's flight can have on the family and its composition, for example because of trauma or a prolonged period in transit.[96] Families may be composed out of the remnants of various households, whose members depend on each other for mutual support. These families may not fit neatly into preconceived notions of a 'nuclear' family but the ties between their members can be of equal emotional, economic or other dependency-related significance.[97] In the context of polygamous marriages, States generally only

[92] *Hode and Abdi v. The United Kingdom*, note 34 above, para. 55. *B.F. and Others v. Switzerland*, note 40 above, para. 114. In contrast, Article 9(2) of the EU Family Reunification Directive permits Member States to "confine [family reunification] to refugees whose family relationships predate their entry [to the EU]". EU Family Reunification Directive, note 11 above, Article 9(2). An overview of States' laws and practices regarding the relevance of when a marriage took place in the context of family reunification is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 66–70.

[93] UNHCR Expert Roundtable, 'Summary Conclusions: Family Unity', 2003, note 1 above, para. 8. UNHCR Expert Roundtable, 'Summary Conclusions', 2017, note 11 above, para. 8. EU Family Reunification Directive, note 11 above, Article 4, defining in Article 4(1) family members whom EU Member States shall admit and in Articles 4(2), 4(3) and 10(2) whom they may also admit for reunification purposes, referring to dependency as a critical consideration for the reunification of refugee families.

[94] See Section III above on the definition of 'family'.

[95] See paragraph 14. ExCom Conclusion No. 24 (XXXII) 1981, para. 5. Brazil Declaration, 2014, note 85 above. PACE, *Recommendation 1327 (1997)*, note 47 above, para. 8.7(o). PACE, *Recommendation 1686 (2004)*, note 47 above, paras. 7–8. PACE, *Resolution 2243 (2018)*, note 42 above, para. 3. For example: Chile: *Ley No. 20.430 de 2010, Establece disposiciones sobre Protección de Refugiados*, 8 April 2010, Article 9, www.refworld.org/legal/legislation/natlegbod/2010/es/72695 [in Spanish]. México: *Ley sobre Refugiados, Protección Complementaria y Asilo Político. Última reforma publicada el 18 de febrero de 2022*, 18 February 2022, Article 58, www.refworld.org/es/leg/legis/pleg/2022/es/134493 [in Spanish]. Ecuador: *Ley Orgánica de Movilidad Humana*, note 45 above, Article 1A. Benin: *Loi 2022-31 Portant Statut des Réfugiés et des Apatrides en République du Bénin*, 20 December 2022, Article 30, www.refworld.org/legal/legislation/natlegbod/2022/fr/147083 [in French]. Chad: *Loi No. 027/PR/2020 Portant Asile en Republique du Tchad*, note 45 above, Article 22. Nigeria: *National Commission for Refugees, Migrants and Internally Displaced Persons Act*, 28 December 2022, Article 40, www.refworld.org/legal/legislation/natlegbod/2022/en/147560. An overview of States' laws and practices regarding the family definition applied in the context of family reunification is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 39–62.

[96] UNHCR, *Protecting the Family: Challenges in Implementing Policy in the Resettlement Context*, June 2001, para. 1(c), www.refworld.org/reference/annualreport/unhcr/2001/en/70738. European Union: European Commission, *Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents*, 13 July 2016, COM(2016) 466 final, 2016/0223 (COD), Article 25 and recital 38, www.refworld.org/reference/research/eucommission/2016/en/115566.

[97] UNHCR, *Protecting the Family: Challenges in Implementing Policy in the Resettlement Context*, 2001, note 96 above, para. 1(c).

permit the reunification with one spouse, although they may allow the reunification of the children from more than one partner.[98]

18. For families with different nationalities or permanent residency status, it may be relevant to determine if the family has a realistic possibility to exercise their right to family life in another country of lawful residence or citizenship, rather than in the country of asylum of the receiving family member.[99] It is necessary to consider the human rights situation in that country, as well as the possibility of maintaining international protection, including protection from refoulement.[100]

V. Procedural requirements for family reunification

19. States should provide relevant and accurate information to refugees and other beneficiaries of international protection on family reunification requirements and procedures in a clear, accessible, and transparent manner in a language the person understands, as well as where relevant in a child-friendly format. States should do so when notifying individuals about the recognition of their international protection status.

20. Applications for family reunification of refugees and other beneficiaries of international protection must be dealt with fairly, in a "positive, humane and expeditious manner".[101] States should consider the specific situation in which

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[98] EU Family Reunification Directive, note 11 above, Article 4(4). *Dabo v. Sweden*, Application no. 12510/18, ECtHR, 18 January 2024, paras. 30 and 57, www.refworld.org/jurisprudence/caselaw/echr/2024/en/148322. An overview of States' laws and practices regarding family reunification in the context of polygamous marriages is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 169 to 171. 3.4 UNHCR, *Resettlement Handbook*, '3.4 Women and Girls at Risk', https://www.unhcr.org/resettlement-handbook/3-resettlement-submission-categories/3-4-women-and-girls-at-risk/.

[99] *Abdulaziz, Cabales and Balkandali v. UK*, ECtHR, 1985, note 56 above, para. 68.

[100] ExCom Conclusion No. 12 (XXIX) 1978. A Edwards, 'Human Rights, Refugees, and the Right "To Enjoy" Asylum', note 58 above, p. 317.

[101] CRC, note 10 above, Article 10(1). CRC Committee, *General Comment No. 6*, note 42 above, para. 83. ExCom Conclusion No. 24 (XXXII) 1981, para. 2. ExCom Conclusion No. 85 (XLIX) 1981, para. (w). UNHCR Expert Roundtable, 'Summary Conclusions: Family Unity', 2001, note 1 above, para. 11. UNHCR Expert Roundtable, 'Summary Conclusions', 2017, note 11 above, para. 37. *Saleck Bardi c. Espagne*, Requête no. 66167/09, ECtHR, 24 May 2011, paras. 50–53, www.refworld.org/jurisprudence/caselaw/echr/2011/fr/16038 [in French]. *Tanda-Muzinga v. France*, note 83 above, paras. 73, 81, and 82. *Mugenzi c. France*, note 83 above. *Senigo Longue et autres c. France*, Requête no 19113/09, ECtHR, 10 July 2014, para. 75, www.refworld.org/cases,ECHR,53be7dc94.html [in French]. CoE: Committee of Ministers, *Recommendation N° R (99) 23 of the Committee of Ministers to Member States on Family Reunion for Refugees and Other Persons in Need of International Protection*, 15 December 1999, Rec(99)23, para. 4, www.refworld.org/legal/resolution/coeministers/1999/en/27549. EU Family Reunification Directive, note 11 above, recital 13 and Article 5(3), setting a period of nine months for a decision that can be extended in exceptional circumstances. EU Charter of Fundamental Rights, note 13 above, Article 41. CoE: Committee of Ministers, *Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration*, 20 June 2007, www.refworld.org/legal/resolution/coeministers/2007/en/119627. CoE: Committee of Ministers, *Resolution (77) 31 on the Protection of the Individual in Relation to Acts of Administrative Authorities*, 28 September 1977, www.refworld.org/legal/resolution/coeministers/1977/en/119625. Bolivia: *Constitución Política del Estado*, January 2009, Article 29(II), www.refworld.org/legal/legislation/natlegbod/2009/es/67225 [in Spanish]. *T. v. Minister for Justice, Equality and Law Reform*, [2008] IEHC 361, Ireland: High Court, 19 November 2008, paras. 16 and 21, www.refworld.org/jurisprudence/caselaw/irlhc/2008/en/119635. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Abdi Ali Mahamud v. the Netherlands*, 2021, note 46 above, Section 3.3.

refugees and other beneficiaries of international protection find themselves and the administrative and practical barriers they may face.[102] This may include the requirement to appear in person at an embassy; imposing strict waiting periods or maximum time limits or to submit an application for family reunification; imposing income or other maintenance requirements; application fees or other related costs; as well as some documentary or evidence requirements.[103] Procedures should be adapted to the events that have disrupted the family life and led to the recognition of international protection.[104] The conditions in countries of origin, countries of asylum and in other countries where family members may be present should be considered;[105] and more time may be needed if these are unstable and/or if public order or administration has been disrupted. States should address unnecessary bureaucratic hurdles and delays,[106] and consider alternative, less onerous procedures to overcome any insurmountable obstacles outside of the applicants' control. Decisions rejecting family reunification applications must be justified and communicated to the applicant and family member(s) in a language they understand and must be subject to appeal.

5.1 In person presence requirements

21. International law does not prescribe a specific, single procedure for the family reunification of refugees or other beneficiaries of international protection. However, procedural benchmarks have been established in some regional contexts.[107] State practices differ as regards the submission of applications for family reunification. Some States require an application to be made by the

[102] *Tanda-Muzinga v. France*, note 83 above, para. 75. *N.A.N.S. v. Sweden,* Application no. 68411/10, ECtHR, 27 June 2013, para. 25, www.refworld.org/jurisprudence/caselaw/echr/2013/en/98872 . *F.N. and Others v. Sweden*, Application no. 28744/09, ECtHR, 18 December 2012, para. 67, www.refworld.org/jurisprudence/caselaw/echr/2012/en/116025. *Afrin*, C-1/23 PPU, CJEU, 18 April 2023, paras. 43 and 53, www.refworld.org/jurisprudence/caselaw/ecj/2023/en/148981.

[103] UNHCR, *UNHCR recommendations on flexible approaches to family reunification procedures in Europe*, February 2023, www.refworld.org/policy/legalguidance/unhcr/2023/en/96763.

[104] *Tanda-Muzinga v. France*, note 83 above, para. 73. *Mugenzi c. France*, note 83 above, para. 52.

[105] UNHCR Expert Roundtable, 'Summary Conclusion: Family Unity', 2003, note 1 above, para. 12. *Minister van Buitenlandse Zaken v. K. and A*., C-153/14, CJEU, 9 July 2015, paras. 58 and 71, www.refworld.org/jurisprudence/caselaw/ecj/2015/en/115558, in which the CJEU considered "specific individual circumstances, such as the age, illiteracy, level of education, economic situation or health of a sponsor's relevant family members must be taken into consideration" and that where "circumstances … do not allow regard to be had to special circumstances objectively forming an obstacle to the applicants [meeting the requirements] … those conditions make the exercise of the right to family reunification impossible or excessively difficult".

[106] Dutch Courts have ordered for administrative penalties to be paid to applicants for family reunification for failing to make a timely decision on the application and for further penalties to be paid if the new processing time set by the Court is not respected. See for example: *NL23.2264*, The Netherlands: Court of The Hague, Groningen seat, 30 June 2023, https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2023:9447 and *NL23.11894*, The Netherlands: Court of The Hague, Middelburg seat, 30 June 2023, https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:RBDHA:2023:9766. See also House of Commons Home Affairs Committee (United Kingdom), *The Work of the Immigration Directorates (Q1 2016)*, Sixth Report of Session 2016–17, HC 151, 19 July 2016, para. 39, www.refworld.org/reference/themreport/ukhcl/2016/en/115578. An overview of States' laws and practices regarding timelines and delays for processing applications for family reunification is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp.137–141.

[107] For the case of the EU, see EU Family Reunification Directive, note 11 above and EU Temporary Protection Directive, note 42 above.

refugee or beneficiary of international protection with relevant authorities in the receiving country. Other States require an application to be made by the departing family member(s) with a consular post of the receiving country in the country where they are residing in or, in the absence thereof, in another country.[108]

22. Requiring the application to be submitted by departing family members in person may create logistical and financial difficulties as consular posts may not be available in their place of residence or stay or even in the country they are residing or staying in. Further, security or personal safety reasons may hinder family members from travelling. Women and children, in particular when unaccompanied or separated, may be exposed to gender- and age-related risks in trying to reach consular posts.[109] Such a requirement may also raise legal challenges in relation to securing entry visa, exit visa from the country of current residence or stay, as well as lawfully entering and staying in the State where the consular post is located for the duration of the procedure. Family members may be put in danger when legal routes are not available or cannot be accessed as their status, or absence thereof, would preclude them from legally crossing international borders, which may be necessary in order to access consular services.[110] States are therefore encouraged to waive any requirement for departing family members to confirm the application at a consular post and to allow for a flexible approach to in-person appearance. This may include the possibility of submitting applications for family reunification via a family member in the receiving country, online and, if required, collecting biometric data upon arrival instead of prior to departure. States are also encouraged to provide for the possibility of dealing with legal representatives where possible, including for the purposes of serving rejection letters to applicants, rather than requiring the departing family member(s) to appear in person for this purpose.

23. Where a requirement for the presence of the departing family member(s) cannot be waived, States should reduce the number of appearances to the strict minimum and postpone such appearances to the final stage of the procedure, as well as facilitating travel in situations where it is impossible or excessively difficult to reach the consular post.[111] States are also encouraged to show

[108] An overview of States' laws and practices regarding the country from where family reunification must be applied is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 105–110, with difficulties accessing embassies and other representations described at pp. 124–128.
[109] *Afrin*, note 102 above, paras. 19 and 52.
[110] Red Cross EU Office, *Upholding the right to family reunification for beneficiaries of international protection in Europe*, 30 May 2023, pp. 6 and 7, https://redcross.eu/positions-publications/upholding-the-right-to-family-reunification-for-beneficiaries-of-international-protection-in-europe. ECRE and Red Cross EU Office, *Disrupted Flight*, note 8 above, p. 21.
[111] *Afrin*, note 102 above, paras. 51–54 and 58–60. In its judgment the CJEU held that EU law precludes national legislation which requires, without exception, that an application for family reunification be submitted in person at a competent consular post where it is impossible or excessively difficult for family members to reach this post. Such requirement, applied without the necessary flexibility, prevents exercising the right to family reunification and undermines the objective and effectiveness of the EU Family Reunification Directive.

flexibility regarding appointments and reduce waiting times by increasing capacity where needed in consular posts. Bilateral or regional arrangements for proxy consular services could be used where a consular post of one State is available on the territory and may provide necessary in-person services for other States.[112] Joint assistance programmes for applicants through provision of legal, financial and administrative assistance could also be established.[113] Alternatively, visa processing centres or third-party agencies for visa related services may also be considered.[114] However, necessary protection safeguards need to be put in place by providing third parties with adequate training and guidance on the specific situation of refugees or other beneficiaries of international protection and access to an effective remedy needs to be available. Procedural oversight and quality control need to be ensured by the responsible State authorities including on the provision of accurate information, access to the location, and feedback provided to applicants on their requests.

5.2 Waiting periods and time limits

24. In addition to delays in the family reunification procedures, prolonged asylum procedures result in lengthy periods of family separation and have a serious impact on the mental health of families. States must process asylum claims in the most timely and efficient manner possible, enabling refugees and other beneficiaries of international protection to access their full range of rights. Decision-making should be expedited where family separation has a particularly serious impact, for example on children, or where claims are likely to be manifestly well-founded. States are encouraged to allow refugees and other beneficiaries of international protection to apply for family reunification as soon as their status has formally been recognized.[115] At the same time, it is recommended that States begin preparing for possible family reunification at the early stages of the asylum process, for example, by ensuring that all family members are listed in the asylum application, and by applying an open, flexible definition and broad interpretation of the concept of family.[116]

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[112] Red Cross EU Office, *Upholding the right to family reunification for beneficiaries of international protection in Europe*, note 110 above, pp. 6 and 7. ECRE and Red Cross, *Disrupted Flight*, note 8 above, pp. 21–22. UNHCR, *UNHCR recommendations on flexible approaches to family reunification procedures in Europe*, note 103 above. For example: Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (EU Visa Code), 13 July 2009, Articles 5 and 8, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009R0810.

[113] See, for example, International Organization for Migration (IOM), 'IOM's Family Assistance Programme', https://germany.iom.int/family-assistance-programme-fap.

[114] For example: EU Visa Code, note 112 above, Articles 40–42. CoE: Commissioner for Human Rights, *Realising the Right to Family Reunification of Refugees in Europe*, note 34 above, p. 45.

[115] For more on the effect of family separation on mental health, see paragraph 2. For guidance on procedural standards for refugee status determination and accelerated processing, see UNHCR, *Procedural Standards for Refugee Status Determination Under UNHCR's Mandate*, 26 August 2020, p. 15 and Section 4.9, www.refworld.org/policy/legalguidance/unhcr/2020/en/123306. For example, the EU Family Reunification specifies that, while Member States may generally require lawful residence of up to two years, they "shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her". EU Family Reunification Directive, note 11 above, Article 12(2).

[116] See also Section III on the definition of 'family'. UNHCR Expert Roundtable, 'Summary Conclusions: Family Unity', 2003, note 1 above, para. 13.

25. States sometimes introduce waiting periods for other beneficiaries of international protection before they can apply for family reunification. Requiring a period of lawful residence in the receiving country, before an application for family reunification can be made by a beneficiary of a complementary form of international protection is discriminatory (see paragraphs 7 and 8 above).[117] It fails to take sufficient account of the often vulnerable situation of departing family members and the risks of harm to which they may be exposed in the country of origin or in another country in which they may be residing temporarily, or for the short or longer term. It also does not recognize that receiving family members have often spent considerable time in the asylum procedure before their status is recognized and an application for family reunification can be submitted. They will often thus already have left family members in an uncertain situation for some time. Imposing waiting periods after the recognition of international protection needs and the granting of a complementary protection status exposes them to greater risks, increases their vulnerable situation and may well impede or slow down the integration of the beneficiary of international in the receiving country.[118]

26. In addition, States are encouraged to refrain from setting any maximum time periods to submit an application for family reunification. If such time limits are applied, States may not restrict the right to family life in a way that is incompatible with their international legal obligations. This requires that any time limits which are set for applying to exercise the right to family life through family reunification, or for any step in the application process (such as filing of documents), are applied flexibly. A late application must not, in itself, lead to family reunification being denied altogether.[119]

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[117] In UNHCR's view, imposing a two-year waiting period based on the legal status of the beneficiary of international protection is in breach of the principle of non-discrimination. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of M.A. v. Denmark*, 2019, note 33 above, Sections 3.2.5–3.2.6. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of J. K. v. Switzerland*, 2019, note 33 above, Section 3.2.6. For more on the principle of non-discrimination in family reunification, see paragraphs 7 and 8. In the case of *M.A. v. Denmark*, the ECtHR did not generally question the rationale for a two-year waiting period before beneficiaries of complementary forms of protection are able to reunite with family members but decided that a strict three-year waiting period without the possibility of an individual assessment was not justified. The ECtHR did not assess, however, whether the treatment was discriminatory and in breach of Article 14 of the ECHR read in conjunction with Article 8. *M.A. v. Denmark*, note 85 above, paras. 193, 194 and 197.

[118] *AT and another (Article 8 ECHR - Child Refugee - Family Reunification) Eritrea,* [2016] UKUT 227, United Kingdom: Immigration and Asylum Chamber, 29 February 2016, paras. 35–36, www.refworld.org/jurisprudence/caselaw/gbrutiac/2016/en/115530. EU Family Reunification Directive, note 11 above, recital 4. Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, p. 110.

[119] Ibid., pp. 89–90. *K and B v Staatssecretaris van Veiligheid en Justitie*, C-380/17, CJEU, 7 November 2018, para. 66, www.refworld.org/jurisprudence/caselaw/ecj/2018/en/148982. UNHCR, *The Office of United Nations High Commissioner for Refugees ('UNHCR') Statement on family reunification for beneficiaries of international protection Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of CR, GF, TY v. Landeshauptmann von Wien (C-560/20)*, 2021, note 79 above, paras. 4.3.1-4.3.2.

5.3 Income and other maintenance requirements

27. Family reunification is usually carried out within an immigration framework, whereby States define specific requirements for allowing family reunification, including a minimum income on the receiving family member's part; health insurance, housing, integration and other requirements to ensure family members can be supported.[120] Such requirements must not be used in a manner that would undermine obligations to ensure the right to family life and the principle of family unity.[121] Due to their specific situation, refugees and other beneficiaries of international protection often face specific challenges in seeking to meet these requirements and should benefit from a more favourable family reunification regime, including less demanding preconditions and, as relevant, necessary protection safeguards. For example, they may face particular difficulties in accessing employment, due to challenges in obtaining recognition of education qualifications and work experience, limited employability skills, language barriers and trauma. This may render family reunification impossible in practice for some.[122] Refugees and other beneficiaries of international protection should be exempted from such requirements[123] or, at a minimum, benefit from flexibility and less stringent conditions.[124] As per paragraph 8 of these Guidelines, setting more demanding requirements for beneficiaries of other forms of international protection than for refugees is not objectively justified and would be in breach of the principle of non-discrimination.[125]

28. Where a refugee or other beneficiary of international protection needs to request an exemption from the general requirements for family reunification, or

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[120] Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 94–104. For example, EU Family Reunification Directive, note 11 above, Article 7(1)(c).
[121] *Chakroun v. Minister van Buitenlandse Zaken*, C-578/08, CJEU, 4 March 2010, paras. 43 and 44, www.refworld.org/jurisprudence/caselaw/ecj/2010/en/72280.
[122] *Dabo v. Sweden*, note 98 above, para. 107.
[123] ExCom Conclusion No. 24 (XXXII) 1981, para. 9, emphasizing that family reunification of refugees "should be facilitated by special measures of assistance … so that economic and housing difficulties in the country of asylum do not unduly delay the granting of permission for the entry of the family members". Also, ExCom Conclusion No. 88 (L) 1999, para. (b)(v), underlining the need for "programmes to promote the self-sufficiency of adult family members so as to enhance their capacity to support dependent family members". PACE, *Resolution 2243 (2018)*, note 42 above, para. 10, underlining that "family reunification should not be dependent on the financial situation of a parent who is a migrant or refugee". EU Family Reunification Directive, note 11 above, Article 12. *K and B v Staatssecretaris van Veiligheid en Justitie*, note 119 above, para. 53.
[124] PACE, *Recommendation 1686 (2004)*, note 47 above, para. 12.3(d). *B.F. and Others v. Switzerland*, note 40 above, paras. 104–108 and 126–133. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of J. K. v. Switzerland*, note 33 above, para. 3.2.5. *Dabo v. Sweden*, note 98 above, para. 107. UNHCR, *The Office of United Nations High Commissioner for Refugees ('UNHCR') Statement on family reunification for beneficiaries of international protection Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of CR, GF, TY v. Landeshauptmann von Wien,* note 79 above, Section 4.5. *D.H. and Others v. Sweden* Application no. 34210/19, ECtHR, 25 July 2024, para. 71, www.refworld.org/jurisprudence/caselaw/echr/2024/en/148323. An overview of States' laws and practices regarding the application of specific requirements for family reunification is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 96–103.
[125] For more on the principle of non-discrimination in family reunification, see paragraphs 7 and 8.

more favourable standards as referred to in the preceding paragraph, States should not apply strict time limits for submitting a request for such an exemption or differential standards.[126] The assessment of reasonable timeliness of the request should be conducted in a flexible manner, taking into account any practical obstacles which might make a delay unavoidable.[127] For instance, refugees and other beneficiaries of international protection may not know the exact whereabouts of or be able to trace family members. They may also lack information and documentation. If a deadline is maintained, refugees and other beneficiaries of international protection should be allowed to make a partial application within the deadline, involving submission of the information and documentation that is available, with the remainder being submitted later.

5.4 Application fees and other costs

29. Imposing fees for submitting family reunification applications may hamper the efforts of many refugees and other beneficiaries of international protection to reunite with their families.[128] Refugees and other beneficiaries of international protection may not have the means to pay fees. They may have insufficient financial resources and limited or no access to the labour market, banking systems or private loan schemes. Imposing fees may put refugees and other beneficiaries of international protection in precarious, exploitative situations, whereby choices may have to be made which family member to reunite with first, while leaving others behind. If fees are imposed for family reunification applications, they must be proportionate and must not aim or have the effect of making family reunification impossible or excessively difficult.[129] States are

[126] UNHCR, *UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification*, note 36 above, p. 6, considering a three-month deadline imposed by the EU Family Reunification Directive (Article 12(1)) as not taking sufficiently into account the particularities of the situation of beneficiaries of international protection. European Union: European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, 3 April 2014, COM/2014/0210 final (Commission Communication on FRD), Section 6.1, www.refworld.org/policy/legalguidance/eucommission/2014/en/114027. An overview of States' laws and practices regarding deadlines for the submission of an application for family reunification is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 90–94.

[127] Commission Communication on FRD, note 126 above, Section 6.1.3. CoE, *Family Reunification for Refugee and Migrant Children, Standards and promising practices*, April 2020, pp. 49–50, https://rm.coe.int/family-reunification-forrefugee-and-migrant-children-standards-and-pr/16809e8320. *A and S v Staatssecretaris van Veiligheid en Justitie*, C-550/16, CJEU, 12 April 2018, para. 61, www.refworld.org/jurisprudence/caselaw/ecj/2018/en/148983. UNHCR, *The Office of United Nations High Commissioner for Refugees ('UNHCR') Statement on family reunification for beneficiaries of international protection Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of CR, GF, TY v. Landeshauptmann von Wien*, note 79 above, Section 4.2.

[128] European Commission, *Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)*, COM/2011/0735 final, 15 November 2011, para. 5.3, www.refworld.org/docid/583d7a567.html. UNHCR, *UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification*, note 36 above, pp. 15–16.

[129] *G.R. v. The Netherlands*, Application no. 22251/07, ECtHR, 10 January 2012, para. 55, www.refworld.org/jurisprudence/caselaw/echr/2012/en/85034. *Minister van Buitenlandse Zaken v. K. and A*, note 105 above, para. 64. Commission Communication on FRD, note 126 above, Section 6.1.

encouraged to waive or to apply reduced fees or provide for financial assistance schemes.[130]

30. Beyond application fees, applicants often need to overcome other administrative challenges involving additional costs when applying for family reunification.[131] This includes obtaining documentation, certification[132] and translation of documents, travel expenses, medical tests, and legal representation.[133] The more complex cases are, the higher the accumulated costs. This is for example because they do not fit neatly within the standard procedures or narrow definitions. States are encouraged to provide financial support to refugees and other beneficiaries of international protection who have insufficient resources to effect family reunification.

5.5 Documentation and evidence

31. Refugees and other beneficiaries of international protection often face difficulties providing the extensive documentation and evidence required for family reunification, for example to prove identity,[134] personal status and family relationships,[135] including through dependency. The required documents often include identity documents for all family members; birth, marriage or death certificates; custody, legal guardianship or adoption papers; proof of cohabitation; financial or medical documentation; and travel documents.[136] Cases in which families can provide all required documentary evidence will be the exception rather than the rule. In some countries it may not be the norm to issue such documents or civil registration systems may be inadequate. It may also be impossible to obtain documents, for example because of conflict, gender-related discrimination, an inaccessible or failed administration, or because the individual is stateless. Documents may have been left behind in haste, lost or destroyed during flight.

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[130] An overview of States' laws and practices regarding the imposition of fees for family reunification applications is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, p. 113.
[131] CMW and CRC Committees, *Joint General Comment No. 4 and No. 23*, note 53 above, para. 38.
[132] International Commission on Civil Status (ICCS), *Convention on International Cooperation in the Matter of Administrative Assistance to Refugees*, 3 September 1985, Article 8, www.refworld.org/legal/agreements/iccs/1985/en/54146.
[133] UNHCR, *UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification*, note 36 above, pp. 15–16. An overview of States' laws and practices regarding the costs of procedures and travel involved in family reunification is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 133–134.
[134] Article 27 of the 1951 Convention requires that all refugees, including asylum-seekers, are issues with identity documents, unless they possess valid travel documents. 1951 Convention, note 1 above, Article 27.
[135] Article 12(1) of the 1951 Convention requires that the personal status is determined by the law of the country of domicile, i.e., the country of asylum. Under Article 12(2), previously acquired rights on personal status are maintained, unless such right would be against public policy of the recognizing State. 1951 Convention, note 1 above, Article 12. See James C. Hathaway, *The Rights of Refugees under International Law*, Second Edition (Cambridge University Press, 2021), pp. 237–255.
[136] Regarding travel documents see Section 7.3.

32. Certification[137] and seeking new or replacement documents may require repeated contact with the authorities of the country of origin, or with non-state agents of persecution, which can put all family members in countries of asylum, origin and other countries in danger. Refugees and other beneficiaries of international protection no longer enjoy the protection of their country of origin and their ties with that country are often broken.[138] Refugees and other beneficiaries of international protection and their family member(s) therefore cannot reasonably be expected to approach the authorities of the country of origin, or non-state agents of persecution (which may include other members of the close or extended family in some cases) to obtain documentation and evidence.[139]

33. While it is a general legal principle that the burden of proof rests on the applicant, the duty to ascertain and evaluate all the relevant facts to facilitate family reunification is shared between the applicant and the examining authority,[140] which is encouraged to take into account other evidence.[141] Where a refugee is unable to present documents from another country for the purposes of family reunification, the countries of residence must provide assistance.[142] Article 25(1) of the 1951 Convention requires Contracting States "to arrange that such assistance be afforded to him by their own authorities or an international authority", "[w]hen the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse".[143] This includes the right to family life and the principle of family unity and therefore also relates to family reunification.[144] The nature of international protection requires that providing administrative assistance cannot be contingent on a refugee having first tried and failed to obtain

[137] Certification of documents is usually done through legalization by the Embassy of the issuing country or an Apostille Certificate by designated Competent Authorities of Contracting Parties to the 1961 Apostille Convention. HCCH, *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (5 October 1961) www.hcch.net/en/instruments/conventions/full-text/?cid=41.
[138] ECOSOC, Ad Hoc Committee on Statelessness and Related Problems, *Status of refugees and stateless persons*, Memorandum by the Secretary-General, E/AC-32/2, p. 40, https://digitallibrary.un.org/record/798436?v=pdf.
[139] Grahl-Madsen, *Commentary on the Refugee Convention 1951 Articles 2–11, 13-37* (Division of International Protection of the UNHCR, 1997), p. 60, www.unhcr.org/3d4ab5fb9.pdf. The Federal Administrative Court of Germany has ruled in October 2022 that a beneficiary of subsidiary protection may not be denied the issuance of a foreigner's passport if the country of origin requires the signature of a declaration of regret to issue such document. The plaintiff cannot be reasonably expected to sign said declaration because it would constitute the self-incrimination of a crime for which they may be subjected to torture, inhuman or degrading treatment or punishment. The fact that other persons of the same nationality decide to sign the declaration does not change the conclusion that the signature cannot be reasonably expected. The Court ordered the issuance of a foreigner's passport provided that all other preconditions are fulfilled. Germany: *BverwG 1 C 9.21*, Federal Administrative Court (Bundesverwaltungsgericht), 11 October 2022, paras. 7, 27–30, www.bverwg.de/111022U1C9.21.0 [in German]. See also *S.E. v. Serbia*, note 90 above, para. 79. Commission Communication on FRD, note 126 above, Section 6.1.2. *E. v. Staatssecretaris van Veiligheid en Justitie C-635/17 (request for preliminary ruling)*, CJEU, 13 March 2019, para. 66, www.refworld.org/jurisprudence/caselaw/ecj/2019/en/122569.
[140] UNHCR, *Handbook on Procedures*, note 43 above, para. 196.
[141] *Tanda-Muzinga v. France*, note 83 above, para. 76.
[142] 1951 Convention, note 1 above, Article 25.
[143] Ibid., Article 25(1).
[144] Lester, 'Article 25 (Administrative Assistance/Aide Administrative)', note 18 above, paras. 22 and 33.

assistance from a country to which they cannot have recourse.[145] Administrative assistance must be provided by all Contracting States where refugees are or were residing, including the country of presence of the departing family members.[146]

34. Administrative assistance includes requesting and delivering the required documentation or certification directly from the authorities of another country,[147] as well as providing documents in lieu of the originals, including on the basis of an affidavit or sworn statement.[148] Such documentation could include, but is not limited to, documents required for family reunification,[149] in particular relating to personal status and family composition,[150] such as birth, death, marriage, divorce, custody, adoption, and foster care.[151] Article 25(3) requires Contracting States to accept such documents as documentary evidence by "giv[ing] credence in the absence of proof to the contrary".[152]

35. While fees may be charged, such fees must be moderate and commensurate with those charged to nationals for similar services.[153] Refugees without the required financial resources may be granted "exceptional treatment".[154] As per paragraph 8 of these Guidelines, States should provide the same assistance for other beneficiaries of international protection.

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[145] Grahl-Madsen, *Commentary on the Refugee Convention 1951 Articles 2–11, 13-37,* note 139 above, p. 60. Lester, 'Article 25 (Administrative Assistance/Aide Administrative), note 18 above, paras. 33–35.
[146] Lester, 'Article 25 (Administrative Assistance/Aide Administrative)', note 18 above, para. 37.
[147] 1951 Convention, note 1 above, Article 25(2). In accordance with the principle of confidentiality, countries should only be contacted in circumstances where it does not put any of the family members at risk, their informed consent was obtained, and the international protection status is not disclosed. Lester, 'Article 25 (Administrative Assistance/Aide Administrative)', note 18 above, para. 35. UNHCR Representation in Japan, *UNHCR Advisory Opinion on the Rules of Confidentiality Regarding Asylum Information*, 31 March 2005, paras. 3, 6, 8, and 13, www.refworld.org/jurisprudence/amicus/unhcr/2005/en/93151.
[148] Grahl-Madsen, *Commentary on the Refugee Convention 1951 Articles 2–11, 13-37*, note 139 above, pp. 61–62. Lester, 'Article 25 (Administrative Assistance/Aide Administrative)', note 18 above, paras. 44–49. Hathaway, *The Rights of Refugees*, note 135 above, pp. 793–794. UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Summary Record of the Thirty-Fifth Meeting held at the Palais des Nations, Geneva, on Wednesday, 25 July 1951, at. 2.30 p.m.*, 3 December 1951, A/CONF.2/SR.35 p. 9, https://documents.un.org/doc/undoc/gen/nl5/107/00/pdf/nl510700.pdf. For example: Canada: The Federal Courts Citizenship, Immigration and Refugee Protection Rules
SOR/93-22 of the Immigration and Refugee Protection Act allow for the use of affidavits in immigration proceedings: https://laws.justice.gc.ca/eng/regulations/sor-93-22/fulltext.html. United Kingdom: Immigration Rules Appendix FM-SE specifies that "alternative evidence" can be used to evidence family relationships when official documents are unavailable, Section D(e): www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-se-family-members-specified-evidence.
[149] Lester, 'Article 25 (Administrative Assistance/Aide Administrative), note 18 above, paras. 23, 30–31 and 33.
[150] Hathaway, *The Rights of Refugees*, note 135, p. 795.
[151] As per Article 25(5) of the 1951 Convention, the responsibilities under Article 25 do not include identity documents and travel documents.
[152] 1951 Convention, note 1 above, Article 25(3). Grahl-Madsen, *Commentary on the Refugee Convention 1951 Articles 2–11, 13-37,* note 139 above, pp. 62–63. Lester, 'Article 25 (Administrative Assistance/Aide Administrative), note 18 above, para. 56.
[153] 1951 Convention, note 1 above, Article 25(4).
[154] Ibid.

36. The absence of documents should not per se be considered as an impediment when facilitating and deciding on family reunification.[155] Requirements for a refugee or other beneficiary of international protection to present documents for family reunification should be flexible, realistic and appropriate to the situation of the refugee or other beneficiary of international protection. In the absence of documents, other evidence to prove identities or the existence of family relationships should be taken into account.[156] Such other evidence, including the collection thereof, must respect human rights and be proportionate, taking into account considerations of necessity and appropriateness.[157] Other evidence may include correspondence, photographs, joint bills, bank accounts, joint assets or ownership of property, affidavits testifying to relationships provided by the family member(s) or others, witness statements, religious documents, registration history and registration cards with UNHCR or other States, and other documents.[158] Credible statements or interviews should be accepted as an alternative form of evidence where documentation requirements cannot be met.[159] Flexible approaches should be applied by enabling remote interviewing or the possibility of waiving interview requirements in specific circumstances, in particular in emergency situations and/or humanitarian crises.

5.6 DNA testing

37. DNA testing may help to prove relationships among individuals who are genetically related through a comparison of their respective DNA material. Where a non-biological relationship is asserted, DNA testing is of no value. Due to its intrusive nature, risks of infringing an individual's right to privacy and possible serious negative consequences for the family, every step should be taken to ensure that DNA testing is conducted only as a last resort to verify family relationships.[160] For DNA testing to be necessary and proportionate, other means of verification of family links must first have proven to be insufficient, or there must be strong indications of fraud or serious doubts as to the genetic relationship.[161] A rights-based, age and gender sensitive, and non-

[155] ExCom Conclusion No. 24 (XXXII) 1981, para. 6. CoE: Committee of Ministers, *Recommendation N° R (99) 23*, note 101 above, para. 4. EU Family Reunification Directive, note 11 above, Article 11(2). *E. v. Staatssecretaris van Veiligheid en Justitie*, note 139 above, paras. 69 and 81.
[156] EU Family Reunification Directive, note 11 above, Article 11(2).
[157] *E. v. Staatssecretaris van Veiligheid en Justitie*, note 139 above, para. 65. European Commission, *Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)*, note 128 above, Section 5.1.
[158] Ibid.
[159] EU Family Reunification Directive, note 11 above, Article 5(2).
[160] UNHCR, *Note on DNA Testing to Establish Family Relationships in the Refugee Context*, June 2008, para. 16, www.refworld.org/policy/legalguidance/unhcr/2008/en/59326. Red Cross EU Office, *Upholding the right to family reunification for beneficiaries of international protection in Europe*, note 110 above, p. 8.
[161] UNHCR, *Amicus curiae of the Office of the United Nations High Commissioner for Refugees in the case X and THE MINISTER FOR JUSTICE AND EQUALITY, IRELAND AND THE ATTORNEY GENERAL*, note 46 above, paras. 35–39. *X -v- Minister for Justice & Equality & ors*, [2020] IESC 30, Ireland: Supreme Court, 9 June 2020,

discriminatory approach should be applied instead, with strict regulations and confidentiality in place to ensure that the individuals' dignity and right to privacy are safeguarded. Explicit and informed consent is necessary from the persons concerned before any test is administered.[162]

38. Even if the existence of a biological link is not established through DNA testing, this may not necessarily imply the absence of a family link or an intention to commit fraud. Cultural and social approaches to ascribing family relationships should be considered. Individuals will be less inclined to misrepresent non-existing blood ties if they are confident that persons whom they have always treated and considered as part of the family and with whom they have developed strong personal bonds, or where there is mutual dependency, will be considered as part of the family for purposes of family reunification.[163]

39. DNA testing should not delay an often already lengthy family reunification process. The cost of a DNA test should be borne by the State requiring the test,[164] so that the possibility for family reunification is not obstructed.[165] In any case, the requirement for administrative assistance to refugees precludes States from imposing charges for DNA testing on refugees and other beneficiaries of international protection that are higher than levied on their nationals for such testing[166] in analogous circumstances.

VI. Children and family reunification

40. The CRC recognizes the importance of the family, of family unity and family life for children.[167] States must ensure that a child is not separated from their parents against their will and refrain from arbitrarily interfering with a child's family life. Further, in order to ensure the effective respect for a child's family life, States have a positive obligation to adopt measures to ensure family reunification for children where a child's family has been separated.[168] This is

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para. 115, www.refworld.org/jurisprudence/caselaw/irlsc/2020/en/123234. An overview of States' laws and practices regarding the use of DNA testing in the context of family reunification is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 82–85.

[162] UNHCR, Note on DNA Testing to Establish Family Relationships in the Refugee Context, note 160 above, paras. 17–19.

[163] Ibid., para. 14.

[164] Ibid., para. 32.

[165] An overview of States' laws and practices regarding the use of DNA testing in the context of family reunification is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 82–85. EU Red Cross Office, *Upholding the right to family reunification for beneficiaries of international protection in Europe*, note 110 above, p. 6.

[166] 1951 Convention, note 1 above, Articles 25(4) and 29(1).

[167] CRC, note 10 above, preambular para. 5 and Articles 5, 7, 8, 9, 10, 16, and 22. See Y. Ioffe, The Right to Family Reunification of Children Seeking International Protection under the Convention on the Rights of the Child: Misplaced Reliance on Travaux?', *International Journal of Refugee Law* (2022) Vol.34 (2), pp. 215–240.

[168] CRC Committee, *General Comment No. 6*, note 42 above, para. 81. *Saleck Bardi c. Espagne*, note 101 above, paras. 50–52. *Jeunesse v. the Netherlands*, note 85 above, para. 106. CMW and CRC Committees, *Joint*

particularly the case in situations involving unaccompanied or separated children.[169] Applications to enter or leave a country for family reunification, including their own country, must be dealt with in a "positive, humane and expeditious manner".[170] Measures to reunite a child and the family member(s) must be put in place as soon as possible to avoid further harm by prolonging the separation.[171]

41. States should consider not only the situation of the family member(s) in the receiving country but also that of all family members, in particular children, who remain behind in countries of origin or other countries. They may be at risk of persecution or other serious harm and their psychological and physical well-being may be negatively affected because of conditions in the country where they are, as well as their education and development.[172] They may also have specific health needs, disabilities or be exposed to gender and age-related risks. Legislation and regulations should allow for such exceptional circumstances and specific vulnerabilities to be taken into account and allow for flexibility in procedures and decision-making regarding the reunification of children with their family.

6.1 Best interests of the child

42. States must ensure that the child's best interests are a primary consideration in all legislative, administrative or judicial actions or decisions affecting them, directly or indirectly.[173] They have a responsibility to evaluate the possible

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General Comment No. 4 and No. 23, note 53 above, para. 27. IACHR, *Due Process in Procedures to Determine Refugee and Stateless Person Status and Grant Complementary Protection*, 5 August 2020, para. 148, www.oas.org/en/iachr/reports/pdfs/DueProcess-EN.pdf. Colombia: Constitución Política de Colombia, 27 October 1991, Article 44, www.refworld.org/legal/legislation/natlegbod/1991/es/98214 [in Spanish], recognizing the responsibility of the State, the family and society to assist and protect the child and guarantee the full exercise of their rights, including having and not being separated from the family.

[169] The ECtHR ruled in 2006 in the case of a five-year-old Congolese girl who was seeking to join her mother in Canada but was intercepted in Belgium and returned to the Democratic Republic of Congo that the "State was under an obligation to facilitate the family's reunification". *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, Application no. 13178/03, ECtHR, 12 October 2006, para. 85, www.refworld.org/jurisprudence/caselaw/echr/2006/en/36666. *Advisory Opinion OC-21/14*, note 48 above, paras. 105 and 167. Dublin III Regulation, note 78 above, Article 6(3)(a).

[170] CRC, note 10 above, Article 10(1). CRC Committee, *General Comment No. 6*, note 42 above, para. 83. UNHCR Expert Roundtable, 'Summary Conclusions: Family Unity', 2003, note 1 above, para. 11. CMW and CRC Committees, *Joint General Comments No. 4 and No. 23*, note 53 above, paras. 15, 32 and 35.

[171] *Saleck Bardi c. Espagne*, note 101 above, para. 52.

[172] *Jeunesse v. the Netherlands*, note 85 above, para. 117. CRC Committee, *General Comment No. 14*, note 53 above, para. 6(c). CRC, *General comment No. 7: Implementing Child Rights in Early Childhood*, 20 September 2006, paras. 18 and 36, www.refworld.org/jurisprudence/caselaw/echr/2006/en/36666. For the psychological effects of separation on children, see also J.M. Pobjoy, *The Child in International Refugee Law* (Cambridge University Press, May 2017), pp. 144–149.

[173] CRC, note 10 above, Article 3(1). *O.M. v. Denmark*, CRC/C/94/D/145/2021, CRC Committee, 16 October 2023, para. 8.5, www.refworld.org/jurisprudence/caselaw/crc/2023/en/148962. UNHCR, *The Office of United Nations High Commissioner for Refugees ('UNHCR') Statement on family reunification for beneficiaries of international protection Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of CR, GF, TY v. Landeshauptmann von Wien*, 2021, note 79 above, Section 3.2. *Jeunesse v. the Netherlands*, note 85 above, para. 109. *El Ghatet v. Switzerland*, Appl. no. 56971/10, ECtHR, 8 November 2016, paras. 46–52, www.refworld.org/jurisprudence/caselaw/echr/2016/en/115157. IACHR, *Inter-American principles on the human rights of all migrants, refugees, stateless persons and victims of human trafficking*, note 12 above, Principle 33.

impact of the decision-making process and its outcome on the child and to demonstrate that the rights of the child have been respected,[174] including in relation to the child's family life.[175] The assessment of the best interests of the child in the context of family reunification needs to take into account several elements, including the child's views in accordance with their age and level of maturity; the preservation of the family unit; the gravity of the impact of potential ongoing separation; the care, protection and safety of the child; the child's situation of vulnerability; and the child's right to health and education among other economic, social and cultural rights.[176] Finding the right balance of these elements of the best interests of the child is crucial to ensure the full and effective enjoyment of the child's rights and to ensure their holistic development.[177] In case of negative decisions on family reunification involving children, responsible authorities must explicitly state in their written reasons how the best interests of the child were taken into account.[178]

43. Many States do not allow for family reunification of spouses if the receiving or departing spouse is a child because the marriage is considered to be contrary to public policy.[179] However, at the same time, married children are often excluded from family reunification with their parents or other close relatives despite the marriage not being recognized under public policy rules. Refusing family reunification for unaccompanied or separated married children with their parents or other close relatives may leave them in a particularly vulnerable

[174] The child's best interests is a threefold concept: A substantive right, a fundamental, interpretative legal principle and a rule of procedure. CRC Committee, *General Comment No. 14*, note 53 above, para. 6.
[175] ExCom Conclusion No. 47 (XXXVIII) 1987, para. (d). Brazil Declaration, note 58 above, emphasizing that "the protection needs of accompanied and unaccompanied children and adolescents … should be governed by the principles recognized in the Convention on the Rights of the Child, in particular the best interests of the child and non-discrimination, seeking to preserve family unity and recognizing children as persons entitled to rights and special protection", p. 5. EU Family Reunification Directive, note 11 above, Article 5(5*). Refugee Consortium of Kenya & another v Attorney General & 2 others*, Petition No. 382 of 2014, Kenya: High Court, 18 December 2015, para. 60, www.refworld.org/jurisprudence/caselaw/kenhc/2015/en/109388. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of J. K. v. Switzerland*, 2019, note 33 above, Section 3.5.
[176] Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, p. 187. CRC Committee, *General Comment No. 14*, note 53 above, paras. 52–79. *Refugee Consortium of Kenya & another v Attorney General & 2 others*, note 175 above, para. 63.
[177] CRC Committee, *General Comment No. 14*, note 53 above, paras. 80–84.
[178] Ibid., para. 6(c).
[179] An overview of States' laws and practices in the context of minimum age for family reunification is available in Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 172–175. See also European Parliament, Directorate General for Internal Policies, Study for the JURI committee, *Private International Law in a Context of Increasing International Mobility: Challenges and Potential*, June 2017, Section 1.2.2.2, www.europarl.europa.eu/RegData/etudes/STUD/2017/583157/IPOL_STU(2017)583157_EN.pdf. Many countries in Europe and elsewhere have a set a minimum age of 18 years old, whereas some have set a higher age (21 or 24). EU Family Reunification Directive, note 11 above, Article 4(5), allows the requirement of a minimum age for marriage in the context of family reunification of 21 years of age. This may "only be used to ensure better integration and to prevent forced marriages ... and not in any manner which would undermine the objective of the Directive and the effectiveness". Commission Communication on FRD, note 126 above, Section 2.3. *Marjan Noorzia v. Bundesministerin für Inneres*, C-338/13, CJEU, 17 July 2014, paras. 14 and 19, www.refworld.org/jurisprudence/caselaw/ecj/2014/en/100554. UNHCR, *Resettlement Handbook*, note 98 above, '3.4 Women and Girls at Risk'.

situation without any family support network.[180] The best interests of the child must be a primary consideration in such cases.[181]

44. Family reunification is not in the best interests of the child in instances of abuse or neglect,[182] or if the family member(s) reside in the country of origin and there is a reasonable risk that return would lead to the violation of fundamental human rights of the child.[183] Such a risk is automatically implied when the child is granted refugee status or a complementary form of international protection or when seeking international protection.[184] The risk may also exist where children are unable or hesitant to articulate international protection needs. Returning the child to the country of origin in such situations violates the principle of non-refoulement.[185] States should then make efforts to reunite the family member(s) with the child in the child's country of asylum.[186]

6.2 Unaccompanied and separated children

45. States should take all feasible measures to clarify the fate and whereabouts of missing family members and ensure contact between separated family members, consistent with applicable legal frameworks. States are therefore urged to cooperate with the International Red Cross and Red Crescent Movement, United Nations (UN) entities and non-governmental organizations (NGOs) in tracing the parents or any other family member(s) of an unaccompanied or separated child as appropriate and in accordance with relevant obligations. Every effort must be made to reunite the child with the family if it is assessed to be in their best interests.[187] Unaccompanied and

[180] *X v Belgische Staat*, C-230/21, CJEU, paras. 29, 37–38 and 49, www.refworld.org/jurisprudence/caselaw/ecj/2022/en/149209. See Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 174 and 176.
[181] See UNHCR, *Guidance on child marriage*, note 65 above.
[182] CRC Committee, *General Comment No. 6*, note 83 above, para. 81.
[183] Ibid., paras. 26–28 and 82. UNHCR, *Submission by the United Nations High Commissioner for Refugees in the case G. v. G.*, 18 January 2021, UKSC 2020/0191, paras. 23–27, www.refworld.org/jurisprudence/amicus/unhcr/2021/en/123704. HCCH, *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (25 October 1980) (1980 Child Abduction Convention), Articles 13(1)(b) and 20, www.hcch.net/en/instruments/conventions/full-text/?cid=24.
[184] *Mugenzi c. France*, note 83 above, para. 54.
[185] CRC Committee, *General Comment No. 6*, note 83 above, paras. 26–28. UNHCR, *UNHCR intervention before the Court of Appeal of Ontario in the case of A.M.R.I. v. K.E.R.*, 21 March 2011, Court File No. C52822, paras. 31–33, www.refworld.org/jurisprudence/amicus/unhcr/2011/en/123117. UNHCR, *Submission by the United Nations High Commissioner for Refugees in the case G. v. G.*, note 183 above, paras. 28–30 and 47(6), concluding that if a child is entitled to protection from refoulement, there is no discretion under Articles 13(b) and 20 of the 1980 Hague Child Abduction Convention to return a child under Article 12.
[186] CRC Committee, *General Comment No. 6*, note 83 above, para. 83. CMW and CRC Committees, *Joint General Comments No. 4 and No. 23,* note 53 above, para. 35. See also *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008, www.refworld.org/jurisprudence/amicus/unhcr/2021/en/123704.
[187] CRC, note 10 above, Article 22(2). CRC Committee, *General Comment No. 6*, note 83 above, para. 80. *Advisory Opinion OC-21/14*, IACtHR, 2014, note 48 above, paras. 105 and 167. PACE, *Resolution 2243 (2018)*, note 42 above, para. 12. UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, para. 68, www.refworld.org/policy/legalguidance/unhcr/2009/en/71246.

separated children involved in administrative or judicial proceedings, including family reunification procedures, should be provided with legal representation.[188]

46. Unaccompanied and separated children should have access to family reunification on the same, or a more favourable, basis as adults and other children, including with the objective of being joined by their family member(s). In some instances, unaccompanied or separated children who have been found to be in need of international protection are excluded from sponsoring family members to reunite in the country of asylum of the child, under national rules or practices apparently designed to deter other children from moving irregularly and to reduce immigration.[189] Where children are at risk of persecution or otherwise in need of international protection, they have a right to leave their country of origin and seek asylum. Particularly in situations where children face child-related manifestations of persecution or child-related forms of persecution, such as forced child recruitment, child trafficking and labour, female genital mutilation and other forms of gender-based violence,[190] they may have no choice but to leave their country of origin more urgently ahead of others. In addition, children can and do become separated from their parents while seeking international protection.[191] The bar on children in need of international protection from applying for family reunification is not consistent with the State's international obligations to deal with applications for family reunification "in a positive, humane and expeditious manner"[192] and to ensure their best interests are assessed as a primary consideration in all legislative, administrative, or judicial actions.[193] Not having access to an effective

[188] CRC Committee, *General Comment No. 6*, note 42 above, paras. 33–38.
[189] Several State's laws and practices that do not allow unaccompanied and separated children to reunite with family members can be found in: ECRE, *Not there yet: Family reunification for beneficiaries of international protection*, note 44 above, pp. 14–15 and Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 190–195. Amnesty International, The Refugee Council and Save the Children, *Without My Family: The impact of family separation on child refugees in the UK*, note 7 above.
[190] UNHCR, *Guidelines on International Protection No. 8*, note 187 above, paras. 15–18. ExCom, Conclusion No. 107 (LVIII) 2007, para. (g)(viii).
[191] UNHCR, *Written Submission for the Intervener (UNHCR) in DM v Secretary of State for the Home Department*, 30 May 2022, para. 24, www.refworld.org/jurisprudence/amicus/unhcr/2022/en/124103. Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, p. 194.
[192] CRC, note 10 above, Article 10(1).
[193] *AT and another*, note 118 above, paras. 35–36. *Ayed and others v. Swedish Migration Board, UM 5407-18*, Sweden: Swedish Migration Court of Appeal, 13 November 2018, www.domstol.se/migrationsoverdomstolen/avgoranden/2018/64159/ [in Swedish]. House of Commons Home Affairs Committee (United Kingdom), *The Work of the Immigration Directorates (Q1 2016)*, Sixth Report of Session 2016–17, HC 151, 19 July 2016, para. 39, www.refworld.org/reference/themreport/ukhcl/2016/en/115578. House of Lords (European Union Committee), *Children in Crisis: Unaccompanied Migrant Children in the EU*, HL Paper 34, 26 July 2016, para. 62, www.refworld.org/policy/legalguidance/natlegbod/2016/en/119646. Justice for Children and Youth, *Submission for the CMW-CRC Joint General Comment on the Human Rights of Children in the Context of International Migration*, 29 February 2016, paras. 25-30, http://jfcy.org/wp-content/uploads/2013/10/Submission-for-CMW-CRC-Joint-General-Comment-on-Children-in-Context-of-Migration-JFCY.pdf. CMW and CRC Committees, *Joint General Comments No. 4 and No. 23,* note 53 above, para. 35. Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 190–95.

mechanism allowing children to apply for family reunification is also in breach of the principle of non-discrimination because the difference in treatment between children and adults found to be in need of international protection is not proportionate and reasonable in pursuit of a legitimate aim.[194]

6.3 Waiting periods and specific implications for children

47. States must ensure that children can exercise their rights without discrimination of any kind. As such, States are required to take appropriate proactive measures to ensure effective equal opportunities for all children to enjoy their rights.[195] Limiting family reunification for children based on their or their family member(s)' legal status, including by imposing waiting periods for family reunification for beneficiaries of complementary forms of international protection, is in breach of the principle of non-discrimination and the best interests of the child.[196] Statutory waiting periods can have a particularly adverse effect on the rights and the well-being of a child, irrespective of whether the child is the receiving or departing family member. Older children may reach the age of majority before the waiting period expires, so that they or their family member(s) no longer fulfil the criteria for family reunification, which can result in the permanent separation of the family.[197] This is contrary to the CRC, particularly Articles 9 and 10[198] and the principle of the best interests of the child. In the case of undocumented children, States should take particular care that children are not prevented from accessing their rights by applying reasonable time limits, using discretionary powers where necessary to facilitate family reunification, and transparency in administration procedures.[199]

48. For the purpose of family reunification, the relevant age of a child's eligibility is the date when the person seeking family reunification has applied for international protection, and not the date when the application for protection status was decided, or the age of the child when the application for family reunification was submitted or approved.[200] In cases of doubt, the individual should be presumed to be a child. States should therefore continue to treat

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[194] UNHCR, *Written Submission for the Intervener (UNHCR) in DM v Secretary of State for the Home Department*, note 191 above, paras. 14, 21, 25 and 26. For more on the principle of non-discrimination, see paragraphs 7 and 8.
[195] CRC Committee, *General Comment No. 14*, note 53 above, para. 41.
[196] See Section 5.2. CRC, note 10 above, Arts. 2 and 3(1). CRC Committee, *General Comment No. 14*, note 53 above, paras. 6(c) and 41. PACE, *Resolution 2243 (2018)*, note 42 above, para. 5, stating that children must not be discriminated based on the family they come from. Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 151–52.
[197] Ibid. Deutscher Bundestag (lower house of German parliament), *Vereinbarkeit der Regelungen des Asylpakets II betreffend die Aussetzung des Familiennachzugs für unbegleitete minderjährige Flüchtlinge mit der VN-Kinderrechtskonvention (KRK)*, WD 2 - 3000 - 026/16, 16 February 2016, pp. 9–10, www.bundestag.de/blob/416608/6b721422cd6774314c8fbe11de359e32/wd-2-026-16-pdf-data.pdf [in German].
[198] CRC, note 10 above, Articles 9 and 10.
[199] CMW and CRC Committees, *Joint General Comment No. 4 and No. 23*, note 53 above, para. 33. *B.F. and Others v. Switzerland*, note 40 above, para. 121.
[200] *Bundesrepublik Deutschland v SW, BL and BC*, note 61 above, paras. 42–49. *Bundesrepublik Deutschland v XC*, note 61 above, para. 52.

children who reach the age of majority during the asylum or family reunification procedures as children for the purpose of family reunification. Otherwise, the rights of the child and their family member(s) would depend on how quickly or slowly the authorities act, a factor outside the applicant's sphere of control. This could have the consequence of taking away a child's right to reunite altogether. This would also violate principles of equal treatment and legal certainty.[201]

6.4 Documentation and evidence specific to the situation of children

49. It is important to recognize the particular challenges that arise in the context of international protection in providing documentation and evidence for family reunification of children,[202] in particular in cases where proof of custody or legal guardianship is required.[203] Refugees and other beneficiaries of international protection often do not have effective access to legal information, assistance or representation, or to courts and/or custody and guardianship procedures in countries of origin, asylum or other countries. Families may thus face difficulties in seeking to prove custody or legal guardianship, for example when the parents were not married at the time of the child's birth or are deceased.

50. Contracting States of the 1951 Convention are under an obligation to provide administrative assistance to obtain documentation required to exercise their rights.[204] If custody needs to be determined, all refugees have a right to free access to courts of all Contracting States.[205] In addition, in matters pertaining to access to courts in the country in which they are residing, refugees shall be treated the same as nationals, including regarding legal assistance.[206] States should review their national laws, procedures and judicial systems regulating custody and guardianship and ensure that effective child-friendly procedures are in place to reach decisions without unnecessary delay.[207] Courts are

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[201] *CR, GF, TY v. Landeshauptmann von Wien*, note 75 above, para. 35. *A and S v. Staatssecretaris van Veiligheid en Justitie*, note 127 above, paras. 55 and 64. *B. M. M. and Others v État belge*, Joined Cases C-133/19, C-136/19 and C-137/19, CJEU, 16 July 2020, para. 36, www.refworld.org/jurisprudence/caselaw/ecj/2020/en/148984. UNHCR, *The Office of United Nations High Commissioner for Refugees ('UNHCR') Statement on family reunification for beneficiaries of international protection Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of CR, GF, TY v. Landeshauptmann von Wien*, note 79 above, Section 4.1. On completing family reunification procedures in an expeditious manner, in line with the best interests of the child, see UNHCR Expert Roundtable, 'Summary Conclusions: Family Unity', 2003, note 1 above, para. 11. CMW and CRC Committees, *Joint General Comments No. 4 and No. 23*, note 53 above, paras. 15 and 35.

[202] For general information on documentary requirements for family reunification of refugees and other beneficiaries of international protection, see Section 5.5.

[203] *E. v. Staatssecretaris van Veiligheid en Justitie*, note 139 above, para. 78–81.

[204] See paragraphs 32–35 on administrative assistance.

[205] 1951 Convention, note 1 above, Article 16. No reservations can be made to this Article, see 1951 Convention, Article 42(1).

[206] 1951 Convention, note 1 above, Article 16(2). See Section 7.2 on access to courts and legal assistance.

[207] CRC, note 10 above, Article 12. CMW and CRC Committee, *Joint General Comment No. 4 and No. 23*, note 53 above, Section C on due process guarantees and access to justice. *Acción de tutela sobre protección de la infancia*, Sentencia No. 0313, Colombia: Juzgado 33 Administrativo Oral del Circuito Judicial de Bogotá, Sección Tercera, 15 November 2024, pp. 20–25, www.refworld.org/es/jur/jur/pj/2024/es/149240 [in Spanish], on the prioritized treatment of the case of a refugee child when implementing due administrative procedures to avoid irreparable harm to the child and to safeguard their rights. For this reason, the Court ordered the hearing to grant

encouraged to use information technology to enable family members in different countries to participate in proceedings remotely.[208] In cases of shared custody where the consent by one custodian is required for a child to leave their country of presence to depart on family reunification, (remote) mediation can offer support to finding a solution where it is suitable and does not pose a risk to any of the family members involved.[209]

51. Other beneficiaries of international protection should be treated similarly to refugees with regard to obtaining documentation to exercise their rights, free access to courts, and to legal assistance. They are similarly situated to refugees and face comparable challenges seeking asylum and reunification with family members. Any difference in treatment must be objectively and reasonably justifiable so as not to be discriminatory.[210]

52. In some cases, a parent or custodian of a child may be the agent of persecution or of other forms of serious harm.[211] Such situations need to be carefully considered in family reunification procedures, including in decision-making processes on authorizing the departure of the child from the country of presence for the purpose of reunification with other family members abroad. In such situations, the child and parent or custodian cannot reasonably be expected to contact their persecutory parent or custodian to obtain documents or other evidence, such as their consent for the child to leave the country. Also, where sole custody of the child is requested by the other parent or custodian, proceedings must be made accessible without exposing the child and the other

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permission for the child to leave the country for Resettlement to be held jointly, cumulatively or on the same date as the custody hearing. See also UNHCR, *Comentarios de la Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR) a la solicitud de información del Juzgado Treinta y Tres Administrativo del Circuito Judicial de Bogotá*, 8 November 2024, paras. 13–15, www.refworld.org/es/jur/amicus/acnur/2024/es/149181 [in Spanish] and *Audiencia de Conciliación de custodia y cuidado a favor de una menor*, Acta No. 830, Colombia: Instituto Colombiano de Bienestar Famlliar (ICBF), 20 November 2024, p. 2, www.refworld.org/es/jur/jur/gob/2024/es/149241 [in Spanish].

[208] See, for example, practices developed in the context of Covid-19 and return procedures under the 1980 Child Abduction Convention that could facilitate family reunification procedures in countries of asylum see HCCH, *Impact of the COVID-19 pandemic on the 1980 Child Abduction Convention, in particular on the use of information technology*, 13 August 2023, Section III, https://assets.hcch.net/docs/baa17faa-5306-498c-9292-cdf792010d2a.pdf.

[209] For examples of mediation practices developed in the context of return procedures under the 1980 Child Abduction Convention that could facilitate family reunification procedures in countries of asylum see HCCH, *Guide to Good Practice Child Abduction Convention: Part V – Mediation*, 2012, para. 118 and Sections 1.2, 4, 4.2 and 10, https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf. For principles for mediation structures in cross-border family disputes, see HCCH, *Working Party on Mediation - Principles for the establishment of mediation structures in the context of the Malta Process*, November 2010, www.hcch.net/en/publications-and-studies/details4/?pid=5317&dtid=52. Judicial Conference on Cross-Border Family Relocation, *Washington Declaration of International Family Relocation*, 23–25 March 2010, Article 8, https://assets.hcch.net/upload/decl_washington2010e.pdf.

[210] *Hode and Abdi v. The United Kingdom*, note 34 above, para. 50, considering "that the requirement to demonstrate an 'analogous situation' does not require that the comparator groups be identical. Rather, … they had been in a relevantly similar situation to others treated differently."

[211] UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/01, paras. 9, 15 and 19, www.refworld.org/policy/legalguidance/unhcr/2002/en/31754. CRC Committee, *General Comment No. 6*, note 42 above, para. 27.

parent or custodian to a risk of persecution or other forms of serious harm by putting in place adequate protection safeguards.[212] Granting or confirming sole custody may be necessary where it is in the best interests of the child and to protect the child from danger of experiencing imminent harm, including refoulement.[213] The child should be consulted in accordance with the level of maturity and understanding of the child, and their views and wishes taken into account.[214]

53. If a child is in a particularly vulnerable situation, for example, because they are unaccompanied or separated and have a high level of dependency due to their young age or physical or mental health, States must take positive measures to facilitate family reunification[215] and are encouraged to give favourable consideration to issuing a visa for humanitarian reasons, even in the absence of some documentation, wherever family reunification is determined to be in the best interests of the child.

VII. Other specific issues in relation to family reunification

7.1 Restrictions based on the manner of arrival

54. The manner of arrival in any country, for example, via irregular entry, of a refugee or other beneficiary of international protection, should not restrict their entitlement and ability to reunify with family. Any restrictions on this basis would be in breach of the principles of non-discrimination[216] and, where applicable, non-penalization for irregular entry. In accordance with the purpose of Article 31(1) of the 1951 Convention and given its unqualified use of the word "penalties", the term should be interpreted broadly, precluding any criminal or administrative measure imposed by the State on account of irregular entry or presence that is unfavourable.[217]

[212] For example, in situations where a child is present in another country, under Article 6 of the 1996 Child Protection Convention, jurisdiction over protection measures for refugee children and other internationally displaced children lies with the country of presence of the child (i.e., country of asylum). A transfer of jurisdiction to the country of asylum of the receiving family member, a country to which the child has a substantial connection, could be requested under Article 8, if the country would be better placed to assess the best interests of the child. 1996 Child Protection Convention, note 52 above, Articles 6 and 8.
[213] CRC, General Comment No. 14, note 53 above, paras. 60 and 61.
[214] Ibid., paras. 25 and 81.
[215] See Section 6.1 on best interests of the child.
[216] For more on the principle of non-discrimination in family reunification, see paragraphs 7 and 8.
[217] 1951 Convention, note 1 above, Article 31. UNHCR, *Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/24/14, 23 September 2024, para. 28, www.refworld.org/policy/legalguidance/unhcr/2024/en/148632. IACHR, *Due Process in Procedures to Determine Refugee and Stateless Person Status and Grant Complementary Protection*, note 168 above, paras. 177–180.

7.2 Access to courts and legal assistance

55. Refugees have a right to free access to courts of all Contracting States to the 1951 Convention, to enforce their rights, including the right to family life.[218] Such access is an essential element of the inclusion of refugees in a functioning system of freedom and justice.[219] In addition, in matters pertaining access to courts in the country in which they are residing, refugees shall be treated the same as nationals, including regarding legal assistance.[220] Due to the complexity of many family reunification cases and strict procedural requirements, legal assistance is often necessary to ensure access in practice to the right to family life. Also, effective judicial or other appropriate remedies must be made available in law and practice to enable refugees to enforce the right to family life.[221] As per paragraph 8 of these Guidelines, States should provide the same access and assistance to other beneficiaries of international protection.

7.3 Travel documents

56. Obtaining travel documents and visas may be problematic for family members who have stayed behind in the country of origin or in another country, and who wish to depart through family reunification.[222] This is particularly problematic for family members in conflict zones, countries without fully functioning administrations or countries with a limited number of foreign consular posts.[223] International travel usually requires appropriate travel documents, therefore, "the right to leave a country must include the right to obtain the necessary travel documents".[224] Where the departing family members are refugees, the country of departure must, under the terms of Article 28 of the 1951 Convention and/or Article VI of the 1961 OAU Convention, issue Convention Travel Documents (CTDs), while the legislation and practice of the receiving country must recognize these CTDs.[225] The same should apply to other beneficiaries of

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[218] 1951 Convention, note 1 above, Article 16. No reservations can be made to this article, see 1951 Convention, note 1 above, Article 42(1).
[219] See G. Gilbert and A. M. Rüsch, 'Rule of Law and United Nations Interoperability', *International Journal of Refugee Law* (2018) Vol.30 (1), p. 51.
[220] 1951 Convention, note 1 above, Article 16(2).
[221] ICCPR, note 12 above, Article 2(3) in conjunction with Article 17. ECHR note 13 above, Article 13 in conjunction with Article 8. EU Charter of Fundamental Rights, note 13 above, Article 47. EU Family Reunification Directive, note 11 above, Article 18. *Soufiane El Hassani v Minister Spraw Zagranicznych*, C-403/16, CJEU, 13 December 2017, paras. 28 and 30, www.refworld.org/jurisprudence/caselaw/ecj/2017/en/119621.
[222] UNHCR, *UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification*, note 36 above, pp. 14–15.
[223] *Farag El Dernawi v. Libya*, note 83 above, para. 6.3, a case involving a Libyan refugee in Switzerland, whose wife in Libya had her passport confiscated by the Libyan authorities preventing her and their children to travel to Switzerland.
[224] ICCPR, note 12 above, Article 12(2). HRC, *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, 2 November 1999, para. 9, www.refworld.org/legal/general/hrc/1999/en/46752.
[225] 1951 Convention, note 1 above, Article 28. OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa* (OAU Convention), 1001 U.N.T.S. 45, 10 September 1969, Article VI, www.refworld.org/legal/agreements/oau/1969/en/13572. ExCom Conclusion No. 114 (LXVIII) 2017, recognizes, in preambular paragraph 5 "the importance of travel documents for refugees and stateless persons to facilitate

international protection.[226] Such travel documents must be machine-readable and compliant with standards set by the International Civil Aviation Organization (ICAO).[227]

57. Where departing family members are unable to obtain travel documentation, it is important that provisions are made for the receiving State to issue a one-way laissez-passer document or a humanitarian visa. The International Committee of the Red Cross (ICRC) only issues an Emergency Travel Document (ETD) as a last resort and according to set criteria when authorities are not in position to provide a laissez-passer. On 1 January 2019, a modernized version of the ETD has been produced to comply with ICAO guidance on emergency travel documents. The ICRC calls on all States to officially recognize it.[228]

7.4 Status granted upon family reunification

58. In principle, family members arriving in a country of asylum through family reunification should be granted the same entitlements and have access to the same rights as the refugee or other beneficiary of international protection in the receiving country.[229] It is recommended that the status of the arriving family member(s) is independent from that of the receiving family member to ensure continuation of status, for example in cases of breakup of marriages or

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their travel and the importance of granting visas to holders of these travel documents, where required for the implementation of durable solutions for refugees and complementary pathways to protection and solutions and other travel for refugees and stateless persons, thereby reducing the risk of irregular movement which may expose refugees and stateless persons to exploitation, abuse, violence and human trafficking". *Case of S.E. v. Serbia*, note 90 above, paras. 79–81. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Seraj Eddin v. Serbia (Appl. No. 61365/16) before the European Court of Human Rights*, 20 June 2018, Section 3, www.refworld.org/jurisprudence/amicus/unhcr/2018/en/124303.

[226] See paragraphs 7 and 8 on non-discrimination.

[227] UNHCR and International Civil Aviation Organization (ICAO), *Guide for Issuing Machine Readable Convention Travel Documents for Refugees and Stateless Persons*, February 2017, www.refworld.org/policy/opguidance/unhcr/2017/en/96252. *Convention on International Civil Aviation*, Chicago, 7 December 1944, Document 7300/9, Ninth edition 2006, Articles 37 and 38, www.icao.int/publications/Documents/7300_9ed.pdf. ICAO, *International Standards and Recommended Practices, Annex 9 to the Convention on International Civil Aviation – Facilitation*, Fourteenth Edition, October 2015, Standard 3.12.

[228] See, for instance, in the Syrian context, UNHCR, *High-level meeting on global responsibility sharing through pathways for admission of Syrian refugees, Geneva, 30 March 2016 - Background Note*, 30 March 2016, www.refworld.org/reference/confdoc/unhcr/2016/en/115304. UNHCR, *Resettlement and Other Admission Pathways for Syrian Refugees*, 31 December 2016, https://data.unhcr.org/en/documents/details/57129. PACE, *Resolution 2243 (2018)*, note 42 above, para. 13. An overview of States' laws and practices regarding travel documentation after approval of family reunification is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 130–132.

[229] ExCom Conclusion No. 24 (XXXII) 1981, para. 8, recommending that "[i]n order to promote the rapid integration of refugee families in the country of settlement, joining close family members should in principle be granted the same legal status and facilities as the … family [member] who has been formally recognized as a refugee". CoE: Committee of Ministers, *Recommendation on the legal status of persons admitted for family reunification*, Rec(2002)4, 26 March 2002, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e25d0, recommending that "[a]fter admission for family reunification, the family member should be granted an establishment permit, a renewable residence permit of the same duration as that held by the principal or a renewable residence permit".

partnerships or death of a family member.[230] Where the status of family members is dependent on that of the recognized refugee or other beneficiary of international protection, or where the path to an independent status is a long one, this can result in situations of dependency, which may create problems for family members, in particular for victims of domestic or family violence, or persons at risk of such violence.[231] The status should be without prejudice to the individual international protection needs of the family member(s) and States must allow access to individual refugee status determination or other international protection entitlements.

VIII. Conclusion

59. The right to family life and the principle of family unity are recognized in international human rights law and State practice, including for refugees and other beneficiaries of international protection. Reunification with family members is a key priority for many refugees and other beneficiaries of international protection and often represents a crucial step on the road to a durable solution. Its importance has been affirmed by States in the Global Compact on Refugees[232] and in numerous ExCom Conclusions,[233] including in 2024,[234] where 110 States called for access to effective procedures, flexible requirements and clear referral pathways for reunification with family members. Family reunification is often the only safe pathway to international protection. All States, including Contracting States to the 1951 Convention and/or its 1967 Protocol, can benefit from well-functioning family reunification procedures in

[230] EU Family Reunification Directive, note 11 above, recital 15 and Article 15(3), providing for a margin of discretion, but obliging Member States to lay down provisions ensuring the granting of an autonomous residence permit in the event of particular difficult circumstances. UNHCR, *UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification*, note 36 above, p. 18.
[231] PACE, Committee on Migration, Refugees and Displaced Persons, *Position Paper on Family Reunification*, 2 February 2012, AS/Mig (2012) 01, para. 12, www.refworld.org/policy/legalguidance/coepace/2012/en/114035. CoE, *Convention on preventing and combating violence against women and domestic violence* (11 May 2011), Article 59(1), https://www.refworld.org/legal/agreements/coe/2011/en/79074. An overview of States' laws and practices regarding family members' status in cases of divorce, separation or death is available in: Nicholson, *The "Essential Right" to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification*, note 8 above, pp. 182–184.
[232] UN General Assembly, *Global Compact on Refugees*, 2018, para. 95, www.refworld.org/legal/agreements/unga/2018/en/124198. See also UN General Assembly, *New York Declaration for Refugees and Migrants*, A/RES/71/1, 3 October 2016, para. 79, www.refworld.org/legal/resolution/unga/2016/en/112142. The Global Compact for Safe, Orderly and Regular Migration also calls for facilitating access to procedures for family reunification. UN General Assembly, *Global Compact for Safe, Orderly and Regular Migration*, A/RES/73/195, 19 December 2019, www.refworld.org/legal/resolution/unga/2019/en/147186.
[233] ExCom Conclusion No. 22 (XXXII) 1981, para. B(2)(h) in the context of mass influx. ExCom Conclusion No. 24 (XXXII) 1981, para. 1. ExCom Conclusion No. 47 (XXXVIII) 1987, para. (d). ExCom Conclusion No. 84 (XLVIII) 1997, para. (a)(i). ExCom Conclusion No. 85 (XLIX) 1998, paras. (u), (v) and (x). ExCom Conclusion No. 88 (L) 1999, para. (a). ExCom Conclusion No. 93 (LIII) 2002, para. (iv). ExCom Conclusion No. 100 (LV) 2004, para. (d) in the context of mass influx. ExCom Conclusion No. 101 (LV) 2004, para. (n), in the context of voluntary repatriation. ExCom Conclusion No. 103 (LVI) 2005, para. (n). ExCom Conclusion No. 104 (LVI) 2005, para. (n)(iv), in the context of integration. ExCom Conclusion No. 105 (LVII) 2006, para. (n)(iii). ExCom Conclusion No. 107 (LVIII) 2007, paras. (n)(iii) and (xviii), in the context of resettlement.
[234] ExCom Conclusion No. 117 (LXXV) 2024, para. (f)(iv).

accordance with international law and the contributions that reunified families can bring to their host communities.